

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>ROBERT TRUSCHEIT,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 75677</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 19, 2019, Debra A. Baumbach and Gregg Near presiding. Petitioner appeared *pro se*. Respondent was represented by Katherine Parker, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioner’s Exhibits 1, 3-5 and Respondent’s Exhibit A. Mr. Angelo Loria was admitted as Petitioner’s expert witness. Andrea Noakes was admitted as Respondent’s witness.

DESCRIPTION OF THE SUBJECT

**4017 Lupine Dr. Unit B, Vail, Colorado  
Eagle County Schedule No.: R065409**

The subject property is a custom-built residential home consisting of 3,577 square feet built in 2012. The home has three bedrooms and three and one half baths. Lot size is 19,166 square feet. The subject site is located in the Town of Vail. The town contains several designated hazard zones (i.e. avalanche, rock fall, or debris flow area). The subject is listed in the “powder blast zone” on the Avalanche Hazard zone map and the high severity rock fall zone on the Rock Fall Hazard map.

## PETITIONER'S PRESENTATION

Petitioner testified that he believes Respondent overvalued the subject by approximately \$400,000. Petitioner described the subject improvement and testified to the contents of an appraisal prepared by Angelo's Appraisal, Inc.

The appraisal referenced by Petitioner applied the sales comparison approach in determining the subject's 2019 value. The approach consisted of seven comparable sales, ranging in sale prices from \$2,250,000 to \$3,250,000. After adjustments for concessions, time, site size, view, quality, age, condition, improvement size and garage size, the adjusted sale prices of the comparables ranged from \$2,066,480 to \$2,808,850.

Petitioner testified that the subject property is of traditional design, while newer properties reflect newer, more modern and therefore more desirable design. Petitioner stated that the subject is assigned quality of "good" while some of Petitioner's comparables are rated as "very good." Petitioner also testified that Petitioner's appraisal report references deferred maintenance at the subject property. Petitioner pointed out that Respondent used six out of seven comparable properties relied on by Petitioner.

Petitioner stated that Petitioner's sales bracket the subject (four comparables are lower and three comparables are higher than the subject's value per square foot), while all of Respondent's comparables reflect a lower value than the subject. Overall, Petitioner values the subject at 10% higher than the comparables while Respondent values the subject at 24% higher than the comparables. Petitioner testified that Respondent's elevation of the subject's value above the comparables is not supported. According to the Petitioner, Respondent's appraisal was prepared for purposes of validating the value the assessor placed on the subject property for tax year 2019.

According to Petitioner, Petitioner's comparable one is the most similar to the subject property. Further, according to Petitioner, Respondent failed to make adjustments for sale concessions for Respondent's comparable sales 1, 2 and 4.

Petitioner's witness, Mr. Angelo Loria, a Certified Residential Appraiser that prepared the appraisal report for the subject property that Petitioner relied on in his testimony, appeared by telephone. Mr. Loria testified to the adjustments that he made to the comparable sales and to his inspection of the subject. Mr. Loria testified that he made adjustments for concessions based on conversations with realtors.

Based on the appraisal report prepared by Mr. Loria, Petitioner requested a value of \$2,625,000 for the subject property for tax year 2019.

## RESPONDENT'S PRESENTATION

Respondent presented the testimony of Andrea Noakes, a Certified General Appraiser with the Eagle County Assessor's Office. The witness testified to the location of the subject property and provided a description of the subject improvement. Ms. Noakes testified that she inspected the

subject property when it was approximately 75% complete. According to Ms. Noakes, the subject is a custom-made home designed by an architect that specializes in high-end properties.

Ms. Noakes testified to the appraisal report that she prepared in valuing the subject property. The witness presented a sales comparison approach consisting of six comparable properties ranging in sale prices from \$2,350,000 to \$3,245,000. After adjustments for location, age, square footage, room count, garage and GRFA, the comparables produced a range from \$2,754,475 to \$3,294,475. Respondent considered its comparable sale one as the most similar to the subject. Based on the appraisal, Respondent concluded to the subject's value of \$3,000,000 for tax year 2019.

Respondent assigned a value of \$2,958,110 to the subject property for tax year 2019.

### BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

### THE BOARD'S FINDINGS AND CONCLUSIONS

The Board did not find compelling the appraisal report prepared by Mr. Angelo Loria. Mr. Loria's report inexplicably relied upon a majority of his comparable sales that were in a range of 30 years older than the subject. Adjustments made to the comparable sales were not sufficiently explained and were inconsistent. Additionally, the witness's testimony was insufficient as Mr. Loria presented his opinions over the phone, did not have the appraisal at hand, did not have the work file available and interrupted his explanations numerous times as the witness was distracted by speaking while driving and meeting a party at the airport. In short, Petitioner's witness was misleading and presented a position that was not credible.

The Board was swayed by the adjustments applied by Respondent's witness Ms. Andrea Noakes. Ms. Noakes did consider six of the seven comparables presented by Petitioner's witness disregarding Petitioner's Sale No. 3. The Board agrees with the exclusion of this sale due to an unexplained adjustment of \$100,000 for personal property. After consideration of the adjustments applied by Ms. Noakes, the Board found a greater level of consistency resulting in a supportable conclusion. The consideration given to the subject's GRFA (Gross Residential Floor Area) is particularly appropriate as the zoning in this location has a significant influence on the purchase decision. The Board did find a significant flaw in the witness's procedure due to the lack of a reconciliation process. Given the narrow adjusted range of the comparable sales, the Board finds Ms. Noakes' value conclusion to be reasonable.

ORDER

The Petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 31st day of December, 2019.

**BOARD OF ASSESSMENT APPEALS:**

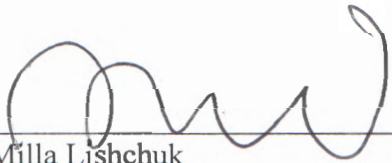
**Drafting Board Member:**




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Gregg Near

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
Milla Lishchuk

**Concurring Board Member:**

  
Debra A. Baumbach,  
*concurring without modification pursuant to  
Section 39-2-127(2), C.R.S.*

