

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No: 75790
Petitioner: LANCE WOOD, v. Respondent: GRAND COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER comes before the Board on Petitioner Lance Wood’s appeal of the 2019 tax year value assigned to his property by the Grand County Board of Equalization (“CBOE”).

PROCEDURAL BACKGROUND

The Board of Assessment Appeals (“Board”), Gregg Near and Diane M. DeVries presiding, held a merits hearing of this case on January 22, 2020. Petitioner appeared pro se. Respondent was represented by Christopher Leahy, Esq. On March 25, 2020, the Board issued a final agency order denying Petitioner’s appeal (“the Board’s Previous Final Agency Order”). Petitioner appealed the Board’s Previous Final Agency Order to the Colorado Court of Appeals, which reversed the Board’s Previous Final Agency Order and remanded the case to the Board for proceedings consistent with its opinion. Specifically, the Court of Appeals found the Board mistakenly treated the appeal as a challenge to the Grand County Assessor’s valuation of the subject property, rather than the CBOE’s valuation, which was higher than the Assessor’s valuation.

FACTUAL RECORD

At the March 2020 merits hearing, the Board admitted into evidence Respondent’s Exhibits A, B, and C, appraisal reports authored by William Wharton, an appraiser with the Grand County Assessor’s Office. The Board heard the testimony of Mr. Wood and Mr. Wharton. An audio recording of this hearing was created. The Board has relied on this existing evidentiary record to reach the findings and conclusions presented in this Final Agency Order. As Board member Gregg Near has retired from the Board, Board member Monte Mullins joined Board member DeVries to consider the evidence in this proceeding on remand.

The subject properties are five vacant lots. They are identified in the below table, along with their appealed CBOE-assigned values, and Petitioner’s asserted values:

Schedule No.	Address	CBOE Value	Petitioner Value
R037050	117 Cedar Drive, Winter Park	\$150,000	\$83,160
R037440	125 Cedar Drive, Winter Park	\$150,000	\$83,160
R037450	139 Cedar Drive, Winter Park	\$150,000	\$83,160
R037430	1383 Winter Park Drive, Winter Park	\$55,000	\$24,640
R303124	40 Balsam Drive, Winter Park	\$312,000	\$136,875

APPLICABLE LAW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the county board’s valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm’n*, 302 P.3d 241, 246 (Colo. 2013).

Colorado requires that an Assessor determine the actual value of the subject parcels based on an appropriate consideration of the market approach, cost approach, and income approach to appraisal. C.R.S. § 39-1-103(5). Actual value is synonymous with market value, *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 203 (Colo. 2005), i.e., “what a willing buyer would pay a willing seller under normal economic conditions.” *Board of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988).

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

When valuing vacant land using the market approach, assessors must consider the direct costs of development, and access, among other factors. § 39-1-103(14)(b), C.R.S.; see *Fidelity Castle Pines v. State of Colorado*, 948 P.2d 26 (Colo. App. 1997).

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Company v. Arapahoe County Bd. of Equalization*, 813 P.2d 768, 770 (Colo. App. 1990). Furthermore, equalization evidence, by itself, does not satisfy the requirement to provide comparable sales with appropriate adjustment. As the Colorado Supreme Court stated in *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 18 n.12 (Colo. 1997):

While the valuation of property similarly situated is credible evidence at trial pursuant to § 39-8-108(5)(b), C.R.S., a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider an equalization argument as support for a value determined using the market approach. *See id.*

FINDINGS AND CONCLUSIONS

The Board finds that Petitioner did not meet his burden of showing that the Grand County Board of Equalization incorrectly valued the subject properties.

Petitioner's argument that the CBOE incorrectly valued the subject properties centered on his disagreement with the percentage by which the subject properties' value increased for tax year 2019. Petitioner referenced Mr. Wharton's appraisal report, where he stated that "vacant land values in the subject's Economic Area increased by 35.33% from July 1, 2016 to June 30, 2018." He pointed out that the subject lots increased by a greater percentage.

However, a large increase in value from one tax year to the next does not itself prove anything about whether the subject was correctly valued. Actual value is market value, which is determined by selection of comparable sales, adjusted for differences with the subject. A site specific appraisal would determine a subject's value not based on an average percentage increase, but on the sales of comparable properties.

In addition, Mr. Wharton testified in support of the percentage increase in value, explaining that resulted partly because for tax year 2019 he removed previous wetland adjustments for the subject properties, finding them unsupported to be unsupported. In reaching this conclusion, he relied on multiple comparable sales in the neighborhood of the subject properties.

Petitioner also compared the percentage by which the subjects' values increased to the percentage by which nearby properties' assessed values increased. Petitioner pointed to the assessed value of other properties, and the percentage by which their value had increased from prior tax years, as evidence that the CBOE overvalued the subject.

The Board, and county assessors, must use comparable sales data to value residential property such as the subject. A market approach relies on the adjusted *sale* price of comparable properties, not the Assessor-assigned *assessed value* of a comparable properties. These properties

were presented not as sales comparables, but as equalization comparables.

However, the assessed value of the equalization comparables presented by Petitioner did not provide any support for lowering the value of the subject properties. Petitioner's argument that the County had valued or raised the subject's value more than similarly situated properties is an equalization argument. Equalization, the act of raising or lowering the total valuation placed on a class or subclass of property within a designated territorial limit, does not account for the specific attributes of individual properties and, thus, is not a proper valuation method for an individual property. The Board may only consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market approach, and if evidence is presented which shows the Board that the assigned values of the equalization comparables were correctly valued by application of the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997).

In this case, Petitioner did not establish the subject lots' values using a market approach, and did not present any evidence showing the Board that the equalization comparables were correctly valued using a market approach. The Board was not presented with adequate evidence to determine how the value of the equalization comparable was arrived at, or what adjustments would be needed within a market approach using them to value the subject properties. As a result, the Board did not find the assessed value of the equalization comparables to be persuasive evidence that the CBOE had incorrectly valued the subject lots.

Petitioner also advocated that a 12% increase in value of the subject lots would have been correct. He derived this percentage from the Grand County Assessor's assessment of another nearby lot which he also owns (not the subject of this appeal). In addition to being an improper equalization argument (as explained above), the Board finds that Mr. Wharton's testimony explained why that lot increased only 12% in value, compared to the larger increases for the subject lots. Mr. Wharton testified that the lot across the river was the subject of an abatement hearing where Petitioner prevailed. Mr. Wharton determined the lot is currently undervalued.

In addition to his equalization argument, Petitioner also argued that various factors should lower the value of the subject lots but had not been taken into consideration by the CBOE in their valuation. These claims included a wetland influence, the encroachment of a garage on one lot onto adjacent property (a lot not owned by Petitioner), irregular shapes creating building difficulties, railroad tracks proximity, and gas line. However, Petitioner provided no market data showing how these factors (evening assuming they exist, which was to some extent contested by the County) would impact the value of the lots.

In addition, the County's appraiser, Mr. Wharton, provided persuasive evidence in the form of a USPAP-compliant appraisal report in which he presented a detailed market approach. His appraisal report was supported by his expert testimony, and he concluded to values which supported the CBOE-assigned values, and which the Board found to be compelling support for the accuracy of those values. The Board was convinced that Mr. Wharton carefully considered and appropriately accounted for each of the factors Petitioner raised in arriving at his value for the subject properties. He recognized potential wetland impacts in his selection of comparables for the lots affected by wetlands. As a result, the Board finds that Petitioner did not show that the CBOE-

assigned values were incorrect due to the existence of these factors.

In conclusion, the Board finds that Petitioner failed to meet his burden of showing that the CBOE-assigned values for the properties were incorrect for the 2019 tax year.

ORDER

The petition is **DENIED**. The CBOE-assigned values for the subject lots for tax year 2019 are affirmed.

APPEAL RIGHTS

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. *See* § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 23rd day of November, 2021.

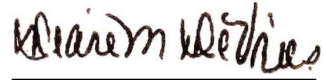
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Monte Mullins

Concurring Board Member:



Diane M. DeVries

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

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



Stephanie Cobos