

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76010
Petitioners: DALE HOLLADY and KIMBERLY HOLLADY, v. Respondent: ELBERT COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 28, 2020, Diane M. DeVries and Samuel M. Forsyth presiding. Kimberly Hollady represented both herself and Dale Hollady. Respondent was represented by Bert Greer, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibits 1-5 and Respondent’s Exhibits A-I, and expert testimony by Respondent’s witness, Michael Akana, Ad Valorem Appraiser employed by the Elbert County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

47740 Foxwood Drive, Elizabeth, Colorado 80107
Elbert County Schedule No.: R113540

The subject property consists of a 2,444-square-foot ranch-style home built in 2004, on 60.03 acres of land, located in the Foxwood subdivision in Elbert County. This is a rural residential area with sites that are generally 35 acres and larger. The subject property is classified as residential. The quality and condition of the dwelling are average.

The subject property's actual values, as assigned by the County Board of Equalization ("CBOE") below and as recommended by the parties, are:

CBOE's Assigned Value:	\$850,000
Respondent's Recommended Value:	\$800,000
Petitioners' Requested Value:	\$710,000 to \$725,000

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor'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). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, a de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.* However, the Board may not impose a valuation on the property in excess of that set by the board of equalization. § 39-8-108(5)(a), C.R.S. (2019).

APPLICABLE LAW

In valuing residential properties for tax purposes, value must be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), 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.

THE BOARD'S FINDINGS AND CONCLUSIONS

Respondent's expert witness, Mr. Akana, did not inspect the subject property. He did perform a drive-by inspection of subject and the comparable sales. Respondent presented an appraisal identifying three sales that are comparable, valid, and timely. All of the comparables are average condition and average quality of construction. The acreages of the comparables are all smaller than the subject by 25 acres. Adjustments were made for time, basement finish and unfinished area, garage, gross living area above grade, bedrooms, bathrooms, extra features, land size, actual year built, deck/patio, and concrete paving. The sale prices of Sales 1-3 before adjustments were \$776,412, \$874,725, and \$831,600 respectively. Respondent recognized a bathroom count error for the subject that resulted in a \$20,000 downward adjustment in addition to the adjustments mentioned above. The adjusted value produced by each of the comparable sales were \$861,862, \$785,575 and \$843,830. Respondent reconciled to a value of \$800,000.

The Board concludes from testimony and evidence that the primary variables of comparison in this rural Elbert County market are year of construction, quality of construction, and quality of interior finish. It is clear in testimony that the question of quality of interior was made clear to Respondent during the appeal period prior to the hearing before this Board. The Board expects that an appraisal at this level of appeal to include an inspection of the interior of the property being appraised when possible. This is especially true when there is a concern by the property owner of the accuracy of the quality of interior condition. In this case, Respondent's witness testified that he did not request access to perform an interior inspection. When asked by the Board why the interior of the subject was not inspected, Mr. Akana replied: "Because it is not typical."

The Board finds that Petitioners provided credible evidence that Respondent failed to accurately describe the interior condition and quality of improvements of both the subject property and the comparables used by Respondent. By virtue of this, the Board also concludes that the selection of comparables by Respondent is flawed.

The Board is not convinced that the interior condition of Respondent's Sales 2 and 3 are accurately described or accounted for in the adjustment grid. Most evident of this conclusion is the condition of interior adjustment of Respondent's Sale 3. Respondent acknowledged, in agreement with Petitioners who had seen the interior of this property, that this property was remodeled. In spite of this acknowledgement, Respondent made no adjustment for remodel to the comparable. The Board finds Respondent's failure to adjust this comparable for remodeling is a flaw in its analysis.

Regarding the offering of the comparables by Petitioners, Respondent's witness testified that Petitioners' Sale 3 could not be considered because, due to its location and distance from thoroughfares, this sale would require such a large adjustment that it would be inappropriate as a comparable sale. The Board does not find this testimony to be credible given the rural nature of this market.

Respondent's witness testified that he analyzed the adjustments in a grid, and that the adjusted values of Sales 2 and 3 offered by Petitioners were \$746,000 and \$784,000 respectively.

The Board concludes that the value of the subject property should be lowered to \$750,000. The Board recommends that the owners and the Elbert County Assessor arrange for an interior inspection of the subject property to determine an accurate description of its quality for future valuations.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$750,000. The Elbert County Assessor is directed to change its records accordingly.

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.

Section 39-8-108(2), C.R.S. (2019).

DATED and MAILED this 23rd day of April, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

Samuel M. Forsyth

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 decision of
the Board of Assessment Appeals.

Jacqueline Lim