

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76545
Petitioners: LOUIS A. KOZIOL and MARY K. KOZIOL, v. Respondent: TELLER COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 17, 2020, Diane M. DeVries and Samuel M. Forsyth presiding. Petitioners Louis A. Koziol and Mary A. Koziol appeared in pro se. Respondent was represented by Matthew A. Niznik, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted Petitioners’ Exhibit 1, Respondent’s Exhibit A, and expert testimony by Respondent’s witnesses Michael Akana, Ad Valorem Appraiser employed by the Teller County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

1460 Kings Crown Road, Woodland Park, CO 80863
Teller County Schedule No.: R0023358

The subject property is a residence consisting of a ranch-style home with 2,059 finished square feet, located in a rural mountain area in Woodland Park, Colorado. The subject property’s actual values—as assigned by the County Board of Equalization (“CBOE”) below, as requested by Petitioners, and as concluded by this Board—are:

CBOE’s Assigned Value:	\$540,000
Petitioners’ Requested Value:	\$485,000
Board’s Concluded Value:	\$522,753

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. Colo. 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.*

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

The issues before the Board revolve around the selection of comparable sales, what adjustments are appropriate, and the degree of adjustments. Petitioners present three comparable sales. After adjustment for time and before any other adjustments, the time-adjusted sale prices range from \$507,512 to \$555,312. After other adjustments are made to these comparables, based in part on the same adjustments used by Respondent and in some cases additional downward site improvement adjustments, Petitioners' adjusted sales range from \$427,351 to \$483,157.

Petitioners contend that Respondent's adjustments are incorrect, specifically: (1) no adjustment for steep driveway access of the subject, (2) improper adjustment for the concrete driveway of the subject, (3) no adjustment for inferior landscaping of the subject, and (4) improper adjustments of \$4,000 per year for differences in effective age of the comparables and the subject.

Petitioners provide no market data regarding how steepness of driveway or 'landscaping' impacts property values in this market. Petitioners also provide no support for the degree of adjustments made for these variables. Considering the rural and mountainous location of the subject property and other properties in the same market, the Board finds insufficient evidence that the subject property's lack of landscaping and steep, cracked concrete driveway have any measurable impact on value.

Petitioners do not account for any of the market variables that are represented in Respondent's adjustment grid on Exhibit A page 15, the most important variable being quality of construction. This deficiency presents an obstacle to the Board in reviewing how representative these comparable sales are for the valuation of the subject.

Finally, the Board recognizes that Respondent's age adjustment is appropriate. This adjustment reflects a market-sensitive reaction to aging of the exterior and interior of comparable sale properties. The Board accepts Respondent's effective year-built adjustments.

Respondent provides three comparable sales pursuant to the sales comparison approach. Respondent's comparable sale prices, after adjustment for time and before any other adjustments, range from \$535,375 to \$785,436. After other adjustments, the adjusted comparable sale prices range from \$528,753 to \$737,144.

The Board finds that Respondent's selection of comparable sales is flawed. The Board finds that after adjustments for time only, the indicated value of Sale 3 is 26% greater than Sale 1 and 47% greater than Sale 2. After other adjustments, the indicated value of Sale 3 is 28% greater than Sale 1 and 39% greater than Sale 2. Based on these large variances, the Board finds that Sale 3 has little credibility and is concerned that the adjusted sale price so much greater than the other two sales may tend to overstate the value of the subject.

Respondent provides no analysis or explanation of how much weight is given the final adjusted values in the reconciliation of market value of the subject, which leads the Board to assume that Respondent has given equal weight to all of the sales.

At the bottom of the adjustment grid on page 15 of Exhibit A, the Board finds that there is an error in Respondent's calculations. In the Reconciliation box, the mathematical measures of the indicated value of the comparables are correct as reflected in the Price Median (\$574,429), Price Mean (\$613,442), and Per-Square-Foot ("P/SF") Median (\$168). Respondent provides no guidance as to what square footage figure is used in the P/SF calculations. Assuming that Respondent intended to apply the total finished square footage (2,059 square feet), the Board

finds that Respondent's calculation of the P/SF Mean (\$162) is a typographical error. The Board finds that the subject property's P/SF Mean is \$180 per square foot.

Like Petitioners, Respondent provides no support in its appraisal as to the degree of its many adjustments to comparables in the adjustment grid. The degree of adjustment for an asphalt/concrete driveway, in particular, lacks support.

The Board finds that Respondent's reconciled value based on the adjustment grid, with the deficiencies noted above, lacks credibility. The Board relies on the lowest indicated value of \$528,753, less a deduction of \$6,000 for the concrete/asphalt driveway, and concludes to a value of \$522,753.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the assigned value of the subject property to \$522,753. The Teller County Assessor is directed to change his/her 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.

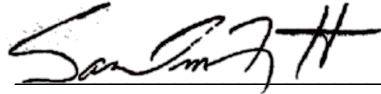
Section 39-8-108(2), C.R.S. (2019).

DATED and MAILED this 12th day of May, 2020.

BOARD OF ASSESSMENT APPEALS:

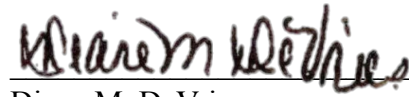


Drafting Board Member:



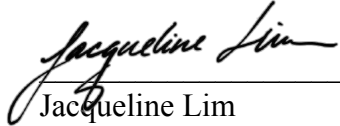
Samuel M. Forsyth

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