

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76547
Petitioners: ANTHONY V. HOGANS and VIRGINIA E. HOGANS, v. Respondent: ARAPAHOE COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on April 14, 2020, Diane M. DeVries and Louesa Maricle presiding. Petitioners appeared in pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibit 1 and 2, Respondent’s Exhibits A and B, and expert testimony by Nicholas W. Johnson, Colorado Ad Valorem Appraiser.

DESCRIPTION OF THE SUBJECT PROPERTY

**1537 Buchanan Circle, Aurora, Colorado 80018
Arapahoe County Parcel No.: 1977-19-3-03-008**

The subject is a two-story single family detached residential property built in 2002, consisting of 2,659 finished square feet above grade and an 814 square foot unfinished basement. The residence has four bedrooms, two full and one half bathrooms, and one fireplace. The subject has an attached two-car garage. The home sits on an 8,712 square foot lot. The subject property lies within the 1st Filing of the Murphy Creek Subdivision and backs to the Murphy Creek Golf Course.

The subject property’s actual values—as assigned by the County Board of Equalization (CBOE) below and as requested by Petitioners—are:

CBOE’s Assigned Value:	\$408,500
Petitioners’ Requested Value:	\$380,000

BACKGROUND

Petitioners claim Respondent has used only high-priced sales, unfairly ignoring lower priced sales in Murphy Creek. The sizes of some of Respondent’s sales and the upgraded conditions of all those properties compared to the subject property, and unfair adjustments Respondent made to the sales have resulted in an unfair valuation. Further, Petitioners claim Respondent’s Sale 2, which closed outside the base period in July 2018, must be excluded.

Petitioners identified 12 comparable properties within Murphy Creek Subdivision filings that sold within the applicable extended statutory period. *See* Ex. 1. Petitioners selected “low-ball” sales in Murphy Creek to balance the “high-ball” sales used by Respondent. All had sale prices between \$342,900 and \$378,000 which Petitioners contend support their claim the subject property has been overvalued.

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 CBOE. § 39-8-108(5)(a), C.R.S. (2019).

APPLICABLE LAW

In valuing residential properties, Colorado's statutes and constitution require that the valuation of residential property be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(8)(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8), C.R.S. (2019), which states:

(a)(I) 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. In order to obtain a reasonable sample and in order to reduce sudden price changes or fluctuations, all sales shall be included in the sample that reasonably reflect a true or typical sales price during the period specified in section 39-1-104 (10.2)...

(f) Such true and typical sales shall include only those sales which have been determined on an individual basis to reflect the selling price of the real property only or which have been adjusted on an individual basis to reflect the selling price of the real property only.

THE BOARD'S FINDINGS AND CONCLUSIONS

The Board finds that Petitioners have not attempted to adjust the comparable sales presented for changing market conditions (time), location, differences in gross living area, or any other physical differences between each of those properties and the subject property, as the Arapahoe County Assessor ("Assessor") is required to do by State statute. Petitioners' conclusion that the unadjusted sale prices support a lower value for the subject ignores the variety of variables that are proven to have a quantifiable impact on value. As a result, the Board concludes Petitioners' unadjusted sales do not provide credible indications of value for the subject property.

Respondent maintains that certain areas of the subdivision ("Neighborhoods") have distinct market characteristics such as quality rating, condition, and amenities; the subject property is in a Neighborhood that includes Filings 1, 5, and 6. Respondent claims Petitioners relied on sales in different Murphy Creek Neighborhood areas that achieve lower prices because of inferior quality levels used by home builders in those subdivision filings compared to the Neighborhood area identified for the subject property. As support, Respondent presented a rebuttal exhibit showing details about the sales that occurred in the subject's Neighborhood area during the 2 years prior to the June 30, 2018 date of value, and also details about the sales that occurred in each of the two Neighborhood areas where Petitioners' sales are located. The sales within the respective Neighborhood areas clearly show that homes in the subject's Neighborhood area typically sell for higher prices than homes in the Neighborhood areas used by Petitioners.

Respondent provided an appraisal required to conform to the Uniform Standards of Appraisal Practice, presented by Nicholas W. Johnson, a Colorado Ad Valorem Appraiser employed by the Arapahoe County Assessor's office. Respondent identified five residential properties that sold within the same identified Neighborhood area in the Murphy Creek development as the subject property. Respondent adjusted the sale prices as applicable for seller concessions and applied a time trend adjustment for properties in this area of the county to reflect the improving market conditions from the dates of the sales to the June 30, 2018 date of value for the subject property. Respondent considered as many as 16 physical attributes that may contribute to value and made upward and downward adjustments to each sale for the significant differences in attributes such as golf course location, quality and condition grade, gross living area, bedroom and bathroom counts, finished basement space, and garage size. Respondent provided MLS listing information to show that Comparable Sale 3 was under contract on June 23, 2018, before the end of the statutory base period, and so is eligible to be included as a comparable sale.

The Board concludes that Respondent's appraisal is substantive and appropriately reflects the impact of a variety of variables which have quantifiable impact on market value. The Board finds that a Quality Grade adjustment to Sale 5 could have been appropriate for upgraded interior finishes, but that change would not have had a material impact on the overall value conclusion. The Respondent's appraisal methodology is sound and credible. Overall, the Board finds the adjustments and testimony of the Respondent to be clear, consistent, compelling, and well documented. The Board further finds Respondent's rebuttal evidence (Exhibit B) provides credible support to Respondent's claim that Petitioners' sales are in Neighborhood areas of Murphy Creek that consistently achieve lower sale prices than the subject's Neighborhood area.

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

ORDER

The petition is denied.

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 7th day of May, 2020.

BOARD OF ASSESSMENT APPEALS



Drafting Board Member:

Louesa Maricle

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