

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76585
Petitioners: MICHAEL GREGORY and JANE GREGORY, v. Respondent: GRAND COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 10th, 2020, Gregg Near and Diane M. DeVries presiding. Michael Gregory represented himself and Jane Gregory. Respondent was represented by Christopher Leahy, Esq. Petitioners protest the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibit 2, Respondent’s Exhibit A, and expert testimony by Respondent’s witness Larry Banman, Real Property Appraiser employed by the Grand County Assessor.

DESCRIPTION OF THE SUBJECT PROPERTY

239 Bergamot Drive #22B, Tabernash, Colorado
Grand County Schedule No.: R209443

The subject property is a 1,872-square-foot townhome built in 2001, and it is classified as residential property. 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:	\$452,860
Petitioners’ Requested Value:	\$412,000

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, the 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 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.

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. (1994), 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 the value determined using the market approach. *See id.*

THE BOARD'S FINDINGS AND CONCLUSIONS

Michael Gregory testified for Petitioners. Mr. Gregory asserted the Grand County Assessor (“Assessor”) had incorrectly valued his property and presented a valuation based upon inconsistencies in comparing Petitioners’ property to other sales within the subdivision. Based upon analysis of the sales data and a reliance upon a value per square foot of building area, Mr. Gregory derived a value of \$410,000 plus an upward adjustment for heat tape applied to the roof to determine a final value of \$412,000.

Mr. Gregory testified to the poor condition of the subject’s roof, driveway and windows and provided an estimate of \$20,000 for repairs. Mr. Gregory also stated his home had been used as the sales office for the builder and the extra traffic increased the wear and tear to the building interior. Additional testimony pointed to the Assessor’s use of larger homes as comparables and reliance upon newer buildings that contained updated features resulting in changes in the building code over time. Mr. Gregory provided no comparable sales from the base period in support of the value estimate.

Respondent’s witness provided a site-specific appraisal report to determine actual (market) value. The following are the items considered in support of the value opinion:

The appraisal appropriately considered comparable sales within the subject’s subdivision which transacted within the base period.

The comparable sales were adjusted for significant differences in property features.

The witness applied adjustment amounts determined through mass valuation.

The comparable sales were considered and adjusted for time (market conditions) as required to reflect the value as of the appraisal date.

Respondent stated that Petitioners’ claim of needed repairs did not consider the joint responsibility for such repairs through the HOA that is shared with the adjoining neighbor. Respondent’s witness also described the repairs as typical for a home of that vintage and they were a part of the age/condition adjustment applied in the valuation.

After review and careful consideration of the testimony and exhibits provided by both parties the Board finds Petitioners have provided insufficient probative evidence to persuade the Board of the viability of the complaint. In regard to the specific points of contention the Board finds the following:

Mr. Gregory pointed to individual transactions within the subject subdivision but no adjustments were applied to the sales.

No consideration was given by Petitioners to market conditions affecting the property values over the time period considered.

Reliance upon the unadjusted price per square foot of building area is not a recognized valuation approach.

Petitioners argued the subject was not valued equally to other similar properties. For an equalization argument to be effective, Petitioners must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach. As that evidence and testimony was not presented, the Board gave limited consideration to the equalization argument presented by Petitioners.

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 21st day of April, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

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Gregg Near

Concurring Board Member:

A handwritten signature in black ink, appearing to read "Diane M. DeVries", written over a horizontal line.

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.

A handwritten signature in black ink, appearing to read "Jacqueline Lim", written over a horizontal line.

Jacqueline Lim