

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76588
Petitioners: DARREN MCARTHY and CHRISTY MCARTHY v. Respondent: SUMMIT COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“the Board”) on March 17, 2020, Samuel M. Forsyth and Diane M. DeVries presiding. Petitioners Darren and Christy McArthy appeared in pro se. Respondent was represented by Julian DeMarco, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioners’ Exhibits 1-6 and 8, Respondent’s Exhibits A-B, and expert testimony by Respondent’s Witness Michael W. Peterson, Certified General Appraiser.

DESCRIPTION OF THE SUBJECT PROPERTY

421 Fairview Boulevard, Breckenridge, Colorado 80021
Summit County Schedule No.: 200355

The subject property is a 2-story, single-family residence located on 0.62 acres of land, 2.7 miles from the town of Breckenridge. The property is located at the west perimeter of the Silver Shekel development, adjacent to Highway 9, and enjoys high peak views to the west. The property was constructed in 1991 and remodeled in 2007 and 2011, containing 3,913 finished square feet including 4 bedrooms and 4 baths (full bath, three quarter bath, 5-piece master bath, and powder room bath). It has public water and sewer and a walkout basement. The subject property sold most recently in April 2015 for a sale price of \$730,000. The subject property’s

actual value, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by the parties, are:

CBOE’s Assigned Value:	\$1,222,801
Respondent’s Recommended Value:	\$1,012,220
Petitioners’ Requested Value:	\$ 815,760 or \$848,256

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 AND AUTHORITATIVE SOURCES

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)(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.

FINDINGS AND CONCLUSIONS

Petitioners' most significant dispute with the county is the determination of quality of construction and condition of the subject. Petitioners contend that the quality of construction is average not good and that the condition of the improvements is fair not average. Petitioners provided 70 pages of photographs of the interior and exterior of the subject to substantiate their contention that the quality of construction is average and the condition fair. Some of the photos reflect deferred maintenance which Petitioners provided costs to cure by local maintenance and repair companies. Respondent requested a physical inspection of the interior of the subject. Petitioners declined to allow Respondent access to the interior.

Petitioners identify 5 comparable sales for which adjustments are made based largely on the values determined by the established model of Summit County used to value the population of residential properties in Summit County on a mass appraisal basis. The time-adjusted sale price range in values of the comparables before other adjustments was \$750,949 to \$960,960. After adjustments, the value range is \$762,220 to \$1,033,296. Respondent and Petitioners agree that two properties can serve as comparable sales: 99 Fairview Boulevard and 522 Fairview Boulevard. The differences between the parties is most clearly defined by the adjustments for these two sales. The adjustments are equal except for quality of construction and condition of improvements. Following is a representation of where the parties differ as illustrated by the only differences in adjustments for the shared comparable sales.

Address	99 Fairview Blvd.		522 Fairview Blvd.	
	Petitioners'	Respondent's	Petitioners'	Respondent's
Party				
Sale Price	\$907,000	\$907,000	\$865,000	\$865,000
Time-Adjusted Sale Price	\$914,256	\$914,256	\$906,250	\$906,250
Adjustment for Quality of Construction	\$0	\$149,905	\$0	\$149,905
Adjustment for Condition	-\$52,467	\$0	-\$48,620	\$0
Total Value of Quality and Condition Adjustments	-\$52,467	\$149,905	-\$48,620	\$138,862
Indicated value of Comparables after all Adjustments	\$809,848	\$1,012,220	\$762,220	\$949,685
Difference in Indicated Values	\$202,372		\$187,464	
Sum of Differences of Quality and Condition Adjustments	\$202,372		\$187,464	

The Board finds that the ‘Individual Subject Value’ listed on the bottom of Petitioners’ grid is not accurately calculated—the total of adjustments is applied to the sale price of the subject for each sale, not the time-adjusted sale price.

Respondent’s expert witness is Michael W. Peterson, Certified General Appraiser, employed by the Summit County Assessor’s Office. Respondent presented an Appraisal Report developed and reported in accordance with the Uniform Standards of Professional Appraisal Practice. Respondent used the following criteria in selecting comparables: location, age, quality, condition and home size. Respondent presented 3 comparables sales for analysis. These time-adjusted sale prices, before other adjustments, range from \$865,000 to \$1,220,000. After other adjustments, the adjusted sale prices range from \$949,685 to \$1,171,190. Respondent concluded to the median indicated value of the subject of \$1,012,220.

The Board finds that the value determined by Respondent is credible and well supported. The Board finds that Respondent adequately and appropriately addressed the valuation issues brought up by Petitioners. The Board concludes that Respondent’s determinations of quality of construction and condition of improvements assigned to the subject are appropriate. Consequently, the comparable selection of Respondent is found to be more appropriate than that of Petitioners, and the value conclusions more accurate. Respondent’s appraisal and rebuttal analysis are found by the Board to be substantive and the conclusion of value accurate. The Board finds that the net percentage adjustments and gross percentage adjustments of the each of Respondent’s comparables are more in line with market standards than those of Petitioners. The Board finally finds that Petitioners’ refusal to allow an interior inspection of the subject, especially when the quality and condition of interior finish is a major part of Petitioners’ appeal, calls into question the credibility of Petitioners’ arguments and overall case.

Based on evidence presented by Respondent in support of \$1,012,220, the Board finds that the subject property was incorrectly valued.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$1,012,220. The Summit 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.

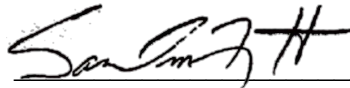
Section 39-8-108(2), C.R.S. (2019).

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

BOARD OF ASSESSMENT APPEALS

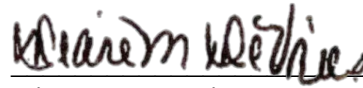


Drafting Board Member:



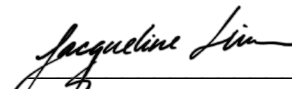
Samuel M. Forsyth

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