

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76623
Petitioners: CAROLA TSCHIEMER and ROBERT TSCHIEMER, v. Respondent: TELLER COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 17, 2020, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner, Carola Tschiemer, appeared by phone on behalf of herself and Robert Tschiemer. Respondent was represented by Matthew A. Niznik, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted into evidence Petitioners’ Exhibits 1-31 inclusive of photos; Respondent’s Exhibit A; and expert testimony by Respondent’s witness Michael Akana, Ad Valorem Appraiser employed by the Teller County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

323 Ranch View Drive, Florissant, Colorado 80816
Teller County Schedule No.: R0006752

The subject property is a 1,210-square-foot residential unit situated on a 7.36-acre site. The residence has one non-conforming bedroom and one bathroom, and was built in 1995. The subject property’s actual values—as assigned by the County Board of Equalization (“CBOE”) below, as recommended and requested by the parties, and as determined by this Board—are:

CBOE’s Assigned Value:	\$270,193
Respondent’s Recommended Value:	\$250,000
Petitioners’ Requested Value:	\$228,049
Board’s Concluded Value:	\$250,000

Petitioners contend that the assigned value of their home increased at a higher rate than their neighbor's property, located at 101 Corral Circle. Mrs. Tschiemer testified that the subject home is a simple frame cabin that lacks a bedroom (they use the loft) and is situated on a steep site with minimal functionality. Petitioners presented two sales that sold within the base period in support of their requested value (Ex. 13-14), but made no adjustments for comparison to the subject.

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.*

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 Co. 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 equalization evidence as support for a value determined using the market approach. *See id.*

FINDINGS OF FACT

The Board is convinced that the subject property has a non-conforming bedroom and one bathroom and is situated on a steep lot backing to a cliff.

The Board accepts that the building size and location of a neighboring property, located at 101 Corral Circle (“neighboring property”) is similar to the subject. However, based on Mr. Akana’s testimony and site visit, the Board finds that the residence on the neighboring property was being remodeled and was only 75% complete as of January 1, 2019. The Board finds that the lower increase in value placed on the neighboring property is not indicative of the value of the subject property.

Both parties presented comparable sales to support their concluded values. Petitioners selected two sales that they believe are similar in size, number of bedrooms and/or location. Respondent also considered Petitioners’ two comparable sales, but did not find them similar to the subject, as Sale 13 (Ex. 13) was not habitable at the time of sale, and Sale 14 (Ex. 14) required a significant upward adjustment for improved market conditions subsequent to the August 2016 date of sale. Respondent’s adjustments to Petitioners’ sales indicated a value range of \$264,956 to \$279,665. The Board found that all of the adjustments to Petitioners’ sales produced a value above Respondent’s recommended value.

Respondent completed a site-specific appraisal, selecting sales of cabins located on sloping and/or steep sites that were believed most similar to the subject. Respondent also gave consideration to the subject’s non-conforming bedroom by making a downward adjustment to the comparable sales along with concluding to a value at the lower end of the indicated range.

CONCLUSIONS

Petitioners provided insufficient probative evidence to support their requested value. Petitioners' selection of sales and lack of adjustments did not produce a credible indication of value for the subject.

Conversely, Respondent provided a site-specific appraisal correctly applying the market approach to support their recommended value. The Board found Respondent's selection of sales and adjustments compelling in support of Respondent's recommended reduced value.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to the recommended \$250,000.

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 23rd day of April, 2020.

BOARD OF ASSESSMENT APPEALS



Drafting Board Member:

Sondra W. Mercier

Sondra W. Mercier

Concurring Board Member:

Debra A. Baumbach

Debra A. Baumbach

*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

Jacqueline Lim