

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76638
Petitioner: ESTATE OF ORMONDE S. BROWN IN CARE OF LTC. KEITH BROWN, v. Respondent: COSTILLA COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 3, 2020, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Keith Brown, Independent Executor for the Estate of Ormond S. Brown. Respondent was represented by Edwin J. Lobato, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioner’s Exhibits 1-15, Respondent’s Exhibits A-D, and expert testimony by Respondent’s witness Rhonda Lobato, Deputy Assessor and Ad Valorem Appraiser employed by Costilla County.

DESCRIPTION OF THE SUBJECT PROPERTY

Forbes Park Unit A-1 Blk 3 Lot 167
Costilla County Schedule No.: 70100670

The subject property is a 1.412-acre vacant lot, located in the Forbes Park subdivision, a gated community. Many lots in Forbes Park, including the subject lot, were damaged by a wildfire that started June 27, 2018, within days of the end of the base period. This wildfire raged for about two weeks and burned over 100,000 acres. To ensure that property valuations for the 2019 tax year properly reflected the impact of this fire, the Costilla County Assessor

("Assessor") relied on a model titled Valuation of Fire & Flood Affected Properties in La Plata County (the "La Plata Model"). Under this model, for lots that were up to 25 percent burned, the Assessor applied a 20 percent adjustment. For lots that were 26-75 percent burned, the Assessor applied a 30 percent reduction. For lots that were 76-100 percent burned, the Assessor applied a 50 percent reduction. The Assessor applied this model uniformly throughout the county. For the subject lot, the Assessor determined that the land was 100 percent burned, and therefore the Assessor applied a 50 percent reduction. Petitioner contends that the Assessor's assigned value is incorrect on the grounds that it (1) fails to account for other comparable sales within Forbes Park, and (2) fails to correctly adjust for the fire damage to the subject lot, which Petitioner believes should instead be a 65-70 percent reduction.

The subject property's actual values, as assigned by the County Board of Equalization ("CBOE") below and as requested by the parties, are:

CBOE's Assigned Value:	\$3,438
Respondent's Requested Value:	\$3,438
Petitioner's Requested Value:	\$2,000

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.*

APPLICABLE LAW

The market approach to appraisal 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.

Article X, section 3(1)(a) of the Colorado Constitution requires that “The actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuation for assessments of all real and personal property not exempt from taxation under the article.”

BOARD’S FINDINGS AND CONCLUSIONS

I. Comparable Sales

Petitioner, represented by Keith Brown, presented eight comparable sales ranging in sale price from \$4,250 to \$10,000 and in size from 1.003 to 1.700 acres. The eight sales produced a median value of \$5,500. No adjustments were made to the sales other than an adjustment for fire damage. It was the opinion of Mr. Brown that a discount of 65 to 70 percent was appropriate for damage caused by fire. Mr. Brown concluded to a pre-fire value of \$5,500; he then applied a 64 percent adjustment to conclude to a value of \$2,000.

Respondent’s witness, Rhonda Lobato, relied on two sales of lots located in Unit A-1, also considered by Petitioner as relevant and comprising two of Petitioner’s eight comparable sales. The sales ranged in sale price from \$5,500 to \$8,250 and in size from 1.449 to 1.700 acres. The two sales produced a median value of \$6,875. Ms. Lobato made no adjustments to the sales.

Neither party provided a site-specific appraisal for consideration of the Board. After review of all eight sales on a per acre basis, the data supports a value range of \$2,881 to \$7,770 per acre, with an average of \$4,936 and a median of \$4,265 per acre. Applying the unit values to the subject at 1.412 acres would indicate a total value for the subject ranging from \$4,068 to \$10,971, or \$6,970 based on the average and \$6,023 based on the median. Respondent’s value appears better supported by the data when the acreage of the subject and the sales is considered.

II. Adjustment for Fire Damage

In response to fire damage, Respondent relied on the La Plata Model. This model was recommended to the Assessor by the Department of Property Taxation. Ms. Lobato testified that the subject was 100 percent burned, and that all properties in the county with damage of 76 to 100 percent had received a 50 percent reduction. Ms. Lobato concluded to a pre-fire value of \$6,875; then applied a 50 percent reduction, concluding to a value of \$3,438.

The Board finds that the subject lot was 100 percent burned. Because Respondent's use of a 50 percent reduction applied equally to all properties similarly affected by the fire, the Board finds that Respondent's 50 percent reduction to the subject property meets the requirement outlined in article X, section 3(1)(a) of the Colorado Constitution. Petitioner provided no evidence to support a higher level of adjustment.

Petitioner 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 16th 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