

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioners: JACALYN PETER and DAVID KELLEY v. Respondent: ARAPAHOE COUNTY BOARD OF EQUALIZATION	Docket No.: 76655
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on June 2, 2020, Diane M. DeVries and Louesa Maricle presiding. Petitioners appeared pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioners’ Exhibits 1 through 9 and Respondent’s Exhibits A and B.

DESCRIPTION OF THE SUBJECT PROPERTY

5803 S. Green Oaks Drive, Greenwood Village, CO 80121
 Arapahoe County Parcel No.: 2077-14-3-11-029

The subject property is improved with a two-story single family residence built on a 1.31-acre lot. The residence has 4,348 square feet above grade, 1,432 square feet below grade, including 1,145 square feet finished space, and an 828 square foot garage. There is a discrepancy in the age of the improvements reported by the parties; Petitioners reported they were constructed in 1974, not 1977 as shown by Respondent. The property backs up to open space and a private equestrian park. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”), and the value requested by Petitioners, are:

CBOE’s Assigned Value:	\$1,765,500
Petitioners’ Requested Value:	\$1,200,000

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 county board of equalization (CBOE) proceeding may be presented to this 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.

APPLICABLE LAW

For property taxation purposes, the value of residential properties must be determined solely by the market approach to appraisal. *See* Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., 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.

Section 39-1-104, C.R.S. requires that a base year system be established to assign values to property. Under that method, the value of property is based upon a specified base period which value is then used in calculating the property's assessed value each year until a new base period is established. *Carrara Place, Ltd. v. Arapahoe County Board of Equalization*, 761 P.2d 197 (Colo. 1988).

FINDINGS AND CONCLUSIONS

Petitioners claim the 2019 mass appraisal assigned value is a wholly unrealistic \$652,800 (56.52%) increase over the 2017 valuation. Petitioners contend that Respondent's sales are of homes that have been renovated, and so are in superior condition relative to the subject property.

Petitioners further claim Respondent's value does not reflect the cracked foundation damage present at one corner of the residence, caused by a broken water pipe, that resulted in settling, and that the value of the subject property should be lower because of this condition. Petitioners testified the building settling was stabilized in 2014, after they purchased the residence, and thus far, no further movement has been noted. However, the sloping kitchen floor at one corner has not been raised because the cost is too high.

I. Petitioners' Value Analysis

Petitioners presented witness testimony of Mr. James Rauh, a Certified Residential Appraiser in Colorado. Mr. Rauh presented his appraisal of the subject property, including Sales 1 through 4 that occurred in April 2017 to April 2018 during the base period. The unadjusted sale prices ranged from \$922,500 to \$1,509,300. Those sales were used to estimate the value of the property before consideration of the foundation damage. Mr. Rauh also presented Sales 5 through 8 that occurred in December 2012 to October 2013 near the time Petitioners purchased the property for \$890,000. Sales 5 through 8 ranged in price from \$890,000 to \$1,350,000. Comparing those four sales, which did not have foundation damage, to the sale of the subject property, Mr. Rauh testified he concluded the structural damage and overall condition of the property had a major impact on the value of the subject property. He testified he used Sales 5 through 8 to help estimate a \$100,000 downward adjustment to value for the structural movement, based on paired sales analysis and a conversation with a residential real estate broker who lives in the vicinity. He further testified he relied on classifications and adjustments used by Respondent in the mass appraisal of the property for some characteristics and on his own analysis for others. After considering all typical sale adjustments for each comparable sale for differences relative to the subject property, and making a deduction to each for his opinion of the impact of the foundation damage, Mr. Rauh concluded to a market value for the property of \$1,320,000.

Respondent claims Petitioners' witness should have performed his own market analysis rather than rely on the general mass appraisal indicators for some adjustments. Respondent contends the \$100,000 adjustment for the foundation damage is not supported. Respondent further believes the subject property was undervalued for the 2017 assessment.

The Board finds Mr. Rauh's adjustments to the sales for site differences would have been more persuasive had he performed his own market analysis rather than relying on Respondent's analysis for that factor. The Board finds that little or no evidence was provided by Mr. Rauh to justify the large upward and downward adjustments to the sales for differences in the sites compared to the subject property or for condition of the improvements. The Board finds the appraiser's conclusion of value, even after making a large deduction for foundation cracks, is significantly higher than Petitioners' requested value of \$1,200,000.

II. 2019 Value Increase Over 2017 Assessment

The Board finds that all county assessors are required under State statute to appraise all real property in the county every two years. For residential properties, the assessor uses sales from the specified base period for that assessment cycle. The Board finds the assessor must use the market approach methodology to estimate value for a new two-year assessment period. The estimate of value is not based on the application of a percentage change in value from one two-

year assessment period to the next. Petitioners did not present evidence that the subject property was accurately valued for the 2017 assessment. The Board concludes that Petitioners' comparison of the 2019 value to the 2017 assessment is not a valid methodology argument.

III. Inferior Condition of the Improvements Due to Foundation Damage

Petitioners claim Respondent's value does not reflect the cracked foundation damage present at the subject property. Although Petitioners have stabilized the damage since purchasing the property in September 2013, and have seen no further structural movement since, the settling of the improvements has resulted in the floor being approximately 1 to 1¾ inches lower in one corner of the residence than the rest of the home. Petitioners claim that condition has a negative impact on value. Respondent contends Petitioners have stabilized the foundation damage and that there is no evidence to support a significant loss in value for the current condition.

The Board has considered the testimony of Petitioners' appraiser, Mr. James Rauh, and finds that his analysis to estimate the \$100,000 negative adjustment for the foundation cracks is inadequate. The witness testified he did not adjust Sales 5 through 8 for changing market conditions (date of sale/time) relative to the 2013 sale of the subject, which is a standard consideration in market approach methodology. Although he made no time adjustment, the witness testified he believed home values were increasing during the period Sales 5 through 8 occurred. The Board finds the failure to apply a supported time adjustment to sales used for matched pair sale analysis does not produce a reliable result. The Board finds the \$100,000 adjustment was not derived by true paired sales analysis, but was, according to witness testimony, based primarily on a comparison of the listing price for the subject property of \$1,000,000 when Petitioners purchased it to the ultimate sale price of \$890,000. The Board finds that insufficient evidence was presented to support the conclusion of the witness that the difference in the listing price and the sale price was wholly due to the foundation settling. Evidence was presented that the subject property was sold as part of an estate and that the initial listing price was lowered four times over approximately a 3.5-month period, indicating seller motivation might also have impacted the asking prices. The Board finds the reason for the lowered sale price is an unknown factor in Mr. Rauh's analysis. It is common for sale prices to differ from listing prices for a variety of reasons. The Board further finds that Petitioners' appraiser did not change his structural movement dollar adjustment for the improved, stabilized condition of the damage as of the 2019 assessment date. The Board concludes that Petitioners' appraiser's analysis to derive the \$100,000 adjustment is not credible.

IV. Respondent's Value Analysis

Respondent presented the witness testimony of Ms. Kimberly Kunish, a Certified Residential Appraiser in Colorado who is employed by the Arapahoe County Assessor's Office. Ms. Kunish presented her appraisal of the subject property. The witness testified Petitioners did not give her the opportunity to inspect the interior of the residence, so could not see the foundation or floor slope issues. The appraisal included five comparable sales that range in unadjusted price from \$1,229,700 to \$1,896,000. Three of the sales occurred during the 18-month statutory base period and two occurred in 2016, within the extended base period. Adjustments were applied for changing market conditions, sale concessions, and physical characteristics. The witness testified she did not adjust the value for the foundation damage because it has been stabilized. She found no evidence to support Petitioners' claim that the current condition impacts the market value of

the subject. The witness assigned weighted reliance percentages to each sale, giving most weight to Sale 1, and concluded to a value for the property of \$1,936,000, which is higher than the CBOE assigned value of \$1,765,500.

The Board finds that even in the absence of market statistical support for an adjustment for the sloping floor in one corner of the kitchen, common sense suggests there could be a negative perception by buyers of that condition, even knowing that the structural movement has been stabilized. The Board finds that a subjective downward adjustment could have been made by Respondent to acknowledge that condition, along with an explanation that statistical support was not available. The Board finds that although two of Respondent's sales occurred within the five year extended base period, giving less weight to them would not have significantly impacted Respondent's conclusion of value.

BOARD CONCLUSIONS

The Board is not persuaded that the large condition adjustments made to two of Petitioners' sales are supported. The Board concludes that Petitioners' appraisal methodology to derive an adjustment for the foundation damage is not credible and therefore does not produce a reliable result. The Board concludes Petitioners' appraisal does not produce a more credible indication of value for the subject property. The Board further concludes that Petitioners' lower requested value than the value presented in their appraisal is not supported by the evidence presented.

The Board concludes it would have been appropriate for Respondent to have considered some negative impact on value for the sloping floor at one corner of the kitchen, even if only in the form of a subjective adjustment. Even though the value conclusion presented by Respondent's witness could have been lower for that reason, the Board concludes it would not likely be lower than the CBOE's assigned value of \$1,765,500.

Petitioners presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioners have failed to meet their burden of proving that the assigned value for tax year 2019 is incorrect.

ORDER

The petition is DENIED. The County Board of Equalization's value of \$1,765,500 for tax year 2019 is affirmed.

APPEAL RIGHTS

If the decision of the Board is against Petitioners, Petitioners 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.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); see also § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 8th day of September, 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 order of the Board of Assessment Appeals.

Casie Stokes