

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78620
Petitioner: LYNN D. SEGAL, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 20, 2020, Sondra Mercier and John DeRungs presiding. Petitioner Lynn D. Segal appeared pro se. Respondent was represented by Olivia D. Lucas, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-5 and Respondent’s Exhibit A and B.

DESCRIPTION OF THE SUBJECT PROPERTY

538 Dewey, Boulder, CO 80304
Schedule #R0005309

The subject property is a single-family residence in North Boulder on a 6,415 square foot site. Built in 1949, it is a main level consisting of a 1,820-SF, 3-bedroom, 3-bathroom dwelling unit, with a 400-SF upper level and no basement. It has a one-car attached garage.

The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$977,800
Petitioner's Requested Value:	\$581,167

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, in this appeal, 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. (2020).

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.

FINDINGS AND CONCLUSIONS

The Petitioner objects to the method of valuing her property using sales of other homes on her street, pointing out that the property next door was demolished and a new home built there a few years ago. She testified to the subject improvement's generally poor condition, and argued

that the difficulty and cost of correcting numerous deferred repairs and maintenance in the subject residence, which was mainly constructed seventy years ago, stemmed from the shortage of competent contractors who are otherwise performing new construction. She testified in relevant part that she applied the assessor's adjustment factors to her first three of eight sales (listed in Exhibit 2, pp. 5-8) giving equal weight to the resulting indications of value by averaging their sale prices. The resulting indication of value for the subject property is \$581,167. She considered her best sale comparables her Sale 1, the sale of the property next door, 540 Dewey, for \$500,000 (and was demolished after sale); her Sale 2, 3056 6th, which sold for \$592,700; and her Sale 3, 970 Union, which sold for \$650,800 (and was demolished after sale). The Board inferred from Petitioner's testimony a conviction that the most likely purchaser of the subject would demolish the existing improvement and build a new one. Petitioner also provided a demolition cost estimate of \$140,400.

Respondent presented the expert testimony of David A. Martinez, an appraiser employed by the Boulder County Assessor's Office. Mr. Martinez acknowledged deferred maintenance at the property. He testified to the assignment of an "average" condition rating, and stated that "average" is a "very broad" category with a "significant range." He testified that assigning a lower condition than average (e.g., poor or salvage) would reflect a property that would be almost to the point that it would not be livable. He stated that he assumed the subject would sell at the middle or lower end of the market, and implied he accounted for the subject's condition by acknowledging this factor in his sales comparison approach. Mr. Martinez testified that for properties with homes built around the time of the subject, and that are the subject's size, the improvement accounts for only about 20% of the value, with the rest of the value residing in the land due to the "demand for it." He stated this also has an effect on how he would adjust for deferred maintenance, but did not conduct an analysis of whether the improvement on the subject has any contributory value.

Mr. Martinez acknowledged that he did not undertake a highest and best use analysis as part of reaching his \$1,008,000 value conclusion. Mr. Martinez addresses highest and best use analysis in his appraisal report as follows:

As required by §39-1-103, C.R.S., the subject property has been appraised based on its status, use and condition as of January 1, 2019. Pursuant to the Jurisdictional Exception Rule of the Uniform Standards of Professional Appraisal Practice, no highest and best use analysis was completed.

Because the purpose of the appraisal is for *ad valorem* taxation and is excepted and restricted from standard appraisal procedures by the Colorado Constitution, Colorado statutes, and Division of Property Taxation guidelines regarding those procedures, highest and best use of the property is the actual use of the property as of January 1, 2019.

Exhibit A, pp. 12, 25.

Mr. Martinez also states within his Summary Appraisal Report that, "My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice," Exhibit A, p. 26, and that the report

“is intended to comply with Uniform Standards of Professional Appraisal Practice Standards (Rule 2-2(b) - reporting requirements for a Summary Appraisal Report).” Exhibit A, p. 1.¹

Mr. Martinez testified that his highest and best use analysis consisted of determining the subject property’s use as of the January 1 assessment date, and that he therefore concluded the subject’s highest and best use to be as a single family residence. He acknowledges that “many of these properties if they are purchased they will be demo’d” but that he “couldn’t say that for every property.” Mr. Martinez explained the practice of the Boulder County Assessor’s Office to consider properties that are demolished after sale to be “land sales” or “scrapes,” and to disqualify them from inclusion in the “sales database” and from consideration as sales comparables for the valuation of residential property. The Board inferred from his testimony these sales would be considered vacant land comparables for land classified “vacant.”

The guiding principle for the taxation of real property in Colorado, and the purpose of Board of Assessment Appeals proceedings, is to determine the actual value of the subject property. *See e.g. Denver v. BAA*, 947 P.2d 1373, 1380 (Colo. 1997). Property is classified according to its use on January 1, the assessment date. *See, e.g. Farny v. Bd. of Equalization of Dolores Cty.*, 985 P.2d 106, 109 (Colo. App. 1999); 2 Div. of Prop. Taxation, Dep’t of Local Affairs, Assessor’s Reference Library Ch. 6, at 6.1. (rev. Jan. 2021). Residential real property must be valued based on the market approach. Colo. Const. Art. X, §20(8)(c); § 39-1-103(5)(a), C.R.S. A property’s highest and best use is relevant within a market approach to “the Board’s determination of the price on which a willing buyer and a willing seller would agree for the property in its present condition” and is a “crucial determinant” of market value. *Bd. of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146 at 152, 154. (Colo. 1988). A property’s “current use” or “actual use” may differ from its highest and best use. A property’s current use may be, for example, an interim use.

The Board finds that a highest and best use analysis conclusion was necessary for developing a credible opinion of market value of the subject, in particular as a fundamental basis for the selection and analysis of comparable market data on which a value conclusion is supported. The Division of Property Taxation’s binding guidance for county assessors in the Assessors’ Reference Library states as follows:

Valuation for ad valorem property taxation should be based on a property’s highest and best use. The requirement of valuing property at its highest and best use was affirmed by the Colorado Supreme Court in Board of Assessment Appeals, et al, v. Colorado Arlberg Club, 762 P.2d 146 (Colo. 1988). In that case the court concluded that “reasonable future use is relevant to a property’s current market value for tax assessment purposes.” The court further noted “our statute does not preclude consideration of future uses” and it quoted the American Institute of Real Estate

¹ The Board notes that USPAP no longer recognizes a category of appraisal report called “Summary Appraisal Report.” It states, “Each written real property appraisal report must be prepared under one of the following options and prominently state which option is used: Appraisal Report or Restricted Appraisal Report.” USPAP, Standards Rule 2-2. The Comment to the Rule adds that, “An appraiser may use any other label in addition to, but not in place of, the label set forth in this Standard for the type of report provided.” USPAP requires specific Report content, dependent on the Report type.

Appraisers, referencing *The Appraisal of Real Estate* 33, 1983, 8th Edition, “In the market, the current value of a property is...based on what market participants perceive to be the future benefits of acquisition.” Reasonable future use is based on the actions and expectations of the market, and is consistent with the highest and best use concept that requires use to be physically possible, legally permissible, financially feasible, and maximally productive.

3 Div. of Prop. Taxation, Dep’t of Local Affairs, Assessors’ Reference Library Ch. 2, at 2.3 - 2.4, (rev. Jan. 2021).

The Uniform Standards of Professional Appraisal Practice, Standards Rule 1-3(b) states that, “when necessary for credible assignment results in developing a market value opinion, an appraiser must develop an opinion of the highest and best use of the real estate.” Both Standards Rule 2-2 (a)(x) (addressing Appraisal Reports) and Standards Rule 2-2(b)(x) (addressing Restricted Appraisal Reports) require that an appraiser, “when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion.”

The required highest and best use analysis would have resulted in a determination of whether the subject’s highest and best use is as vacant or as improved, and whether the current use is an interim use. Inherent in the analysis would have been a determination of what contribution the improvement makes to the property’s value. The analysis of maximum productivity would have included a determination of which use results in the highest present value, and whether for the subject property this is the demolition of the improvement. Evidence from both Petitioner and Respondent suggested that the highest and best use of the property might have been the land as though vacant, rather than the property as improved. The Board was persuaded by Petitioner’s evidence that the condition of the improvement is as she described, which highlights the need to determine whether the improvement has any contributory value. A highest and best use analysis might have supported a conclusion that the subject should be valued as a new building site, and not a single family home. Petitioner’s Sale 1 would then likely be relied on (instead of being disqualified by the Assessor’s office) since it is next door and within 3% of the subject’s land area. Petitioner’s Sale 1 sold in January 2015. Adjusting Sale 1’s sale price to the subject’s date of value, using the 1.2845 time trend monthly adjustment on page 15 of Mr. Martinez’s appraisal (\$500,000 x 1.2845), results in an indication of value for the subject of \$642,250. This falls well short of Respondent’s recommended value.

The Board finds Petitioner has met her burden of proving that the assigned value for tax year 2019 is incorrect. Petitioner offered persuasive evidence of sales comparable to the subject, whose sale prices are much lower than the County-assigned value for the subject. The Board finds these sales provided the best evidence of the value of the subject.

Mr. Martinez’s explanation for not considering Petitioner’s sales centered on the fact that the Boulder County Assessor’s Office disqualifies from its “sales database” any sales of residential property in which the residential improvements were demolished after sale from consideration as residential sales comparables. However, if Mr. Martinez had performed a highest and best use analysis, he would have evaluated whether there is sufficient market activity in the subject neighborhood to show that properties like the subject are purchased for their land value. This

analysis would have considered whether market data – including, perhaps, Petitioner’s sales – indicates the purchasers factored the cost of redevelopment into their purchase price, because they purchased with the intent to redevelop. The conclusion of highest and best use, had it been performed, should have served as a basis for selection of comparable sales used in valuing the subject property. The Board finds that Mr. Martinez’s failure to conduct a highest and best use analysis resulted in an unreliable conclusion of value that provided no credible support for the County’s assigned value.

ORDER

The petition is **GRANTED**. The Boulder County Assessor’s Office is ordered to update its records to reflect a value of \$581,167 for tax year 2019 for the subject property.

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.

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 3rd day of May, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



John DeRungs



Concurring Board Member:



Sondra Mercier

*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