

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>ROBERT AND CRYSTAL KENNAH,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 78912</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 13, 2020, Gregg Near and Sondra Mercier presiding. Petitioners appeared pro se. Respondent was represented by Megan L. Taggart, Esq. Petitioners are protesting the 2019 actual value of the subject property.

The Board accepted Petitioners’ Exhibits 1-6 and Respondent’s Exhibit A. Ms. Becky Fischer was accepted as an expert witness.

The subject property is described as follows:

**7120 Sagebrush Drive
Parker, CO 80138
Douglas County Parcel Number 223314201039**

The improved subject property is a ranch style residence of excellent quality construction constructed in 2000. The home contains 4,938 square feet of finished area, a portion of which is within a finished attic over a detached garage. Additional improvements include a partially finished 2,512 square foot basement and a second detached garage. The residence is located on a 3.12 acre site. The home is reported to be in average condition.

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

CBOE’s Assigned Value:	\$1,360,000
Respondent’s Recommended Value:	\$1,360,000

Petitioners' Requested Value: \$1,150,000
Board's Concluded Value: \$1,360,000

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.

EVIDENCE PRESENTED BEFORE THE BOARD

Petitioner, Mr. Robert Kennah, presented an appraisal report prepared by Ms. Christian Bowman completed for New Penn Financial, LLC. New Penn Financial, LLC was identified as the Lender/Client. The intended use of the report was to evaluate the property for a mortgage finance

transaction. No additional Intended Users were identified by the appraiser. Page 4 of the report includes the statement, “The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question unless specific arrangements to do so have been made beforehand, or as otherwise required by law”. The value opinion stated within the report was \$1,150,000 as of May 1, 2017.

Mr. Kennah testified the Respondent’s appraiser did not adequately consider the actual condition of the home. In support of this claim, Mr. Kennah presented multiple bids for repairs to windows, concrete, stucco, an outdoor water feature and septic work. Petitioner asserted Respondent’s appraiser failed to consider the negative influences to the home caused by a drainage easement, which renders 1.22 acres of the site unusable and limits the site for a new leach field. Additional negative influences were cited for traffic noise due to increased traffic and a nearby school zone.

Petitioner, Mrs. Crystal Kennah, stated the property across the street from their home contains 9 acres and the County valued that land at \$250,077 compared to their land that was valued at approximately \$278,000. Regarding the drainage issue, Mrs. Kennah stated that drainage from the entire neighborhood crosses their property. Mrs. Kennah objected to Comparable No. 2 of Respondent’s appraisal, asserting the home had been a foreclosure and was on the market for some time even though the Realtor owner had invested over \$100,000 in updates.

Respondent’s witness, Ms. Becky Fischer, a Certified Residential Appraiser employed by the Douglas County Assessor’s Office, presented an appraisal report concluding to a final value opinion of \$1,360,000. Ms. Fischer provided four comparable sales ranging in sale price from \$967,500 to \$1,800,000 and in size from 4,524 to 5,492 square feet of above grade living area. The comparable sales were adjusted for sales concessions and time (market conditions) to produce sale prices as of the valuation date of June 30, 2018 from \$952,500 to \$1,773,472. The comparable sales were then adjusted for age, above grade living area, basements (style, size and design), fireplaces and site value. After the above adjustments the comparable sales ranged from \$1,281,399 to \$1,453,843. The witness reconciled the indications and, giving significant consideration to Sales No. 1 and No. 2, concluded a final market value opinion of \$1,360,000.

THE BOARD’S FINDINGS AND CONCLUSIONS

The Board first turns to the testimony and exhibits presented by Petitioners. Petitioners presented an appraisal report that does not meet the standards of Ad Valorem valuation. In brief, Petitioners’ appraisal report was not completed for Petitioners but was commissioned by New Penn Financial, LLC, identified within the report as the sole user/client. The valuation date within the report was May 1, 2017 (whereas the subject must be valued as of June 30, 2018.) The report relied upon two of the comparable sales with transaction dates from June 2016 to September 2016 that are outside the statutory base period. *See* § 39-1-104(10.2)(d), C.R.S. The Board will accept important descriptions of the subject property contained in the report, but rejects reliance upon the value opinion.

Petitioners assert the home is influenced by excessive deterioration and needed repairs that reduce the market value. After review of the report and other evidence presented by Petitioners, there appears to be no credibility to these claims.

Regarding condition, the Board references the first page of the report where the appraiser states, “the terms ‘needed repairs’ and ‘deterioration’ do not include normal wear and tear that occurs with age. Physically this property is subject only to the normal aging process”. Additionally, the condition of the subject and the sales related in the report are described as “C2”. C2 is defined in the Uniform Appraisal Dataset Definitions, third paragraph, within the report as, “The improvements feature no deferred maintenance, little or no physical depreciation and require no repairs”.

Regarding the claimed needed repairs, two additional pieces of evidence were compelling. First, the Board considered the item for “Pond Replacement” (page 13 of repair estimates). The contractor’s bid, unsigned and dated June 25, 2020, beyond the required valuation date of June 30, 2018, makes no reference to damage and needed repairs to the existing pond, but appears focused on development of an entirely new upgrade that, if complete, would surely improve Petitioners’ home value. The second item, the “Stucco” Bid, (page 15) includes the comment, “Most of the stucco cracking appears to be normal stucco cracking”. Regarding all of the reported required repairs, the Board notes that the majority of the items could have been observed and adjusted, if appropriate, by allowing the Respondent’s appraiser to make an interior inspection. Observing the home from outside a locked entry gate cannot lead to reasonable analysis of the claimed poor condition of the subject property.

Petitioners also assert that traffic noise reduces the market value of the subject property. However, the Board notes Petitioners’ report mentions no traffic influences. Respondent’s witness states in her report, page A-17, “The opinion of value places the subject’s value at the lower end of the range due to traffic influences and minor deferred maintenance issues”. Neither party considered the proximity to a school as an adverse influence.

Regarding the influence of time (market conditions), Petitioners’ report makes no adjustment for this factor but includes in the Addendum (not marked but found in paragraph one), “Current market conditions show a market with rising values for the past 24 to 30 months”. Respondent’s appraiser recognized this factor and adjusted the comparable sales as appropriate.

After careful consideration of the exhibits and testimony, the Board finds Petitioners have failed to meet the required burden of proof. Respondent’s witness provided an appraisal report detailing the factors and conclusions leading to a supportable opinion of value. The Board finds Petitioners provided insufficient probative evidence 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).

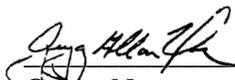
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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. §39-8-108(2), C.R.S.

DATED and MAILED this 31st day of December 2020.

BOARD OF ASSESSMENT APPEALS

Drafting Board Member:



Gregg Near

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 decision of the Board of Assessment Appeals.



Cesenia Araujo
Cesenia Araujo