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| BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 | Docket No.: 79028 |
| Petitioners: RON A. SWIFT and KATHLEEN M. SWIFT, v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION. | |
| FINAL AGENCY ORDER | |

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on September 8, 2020, Diane V. DeVries and Samuel M. Forsyth, presiding. Petitioners appeared pro se. Respondent was represented by Meredith P. Van Horn, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

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

DESCRIPTION OF THE SUBJECT PROPERTY

900 Cuchara St., Denver CO 80221
County Schedule No.: R0068953

The subject property is an 8,030 square foot site improved with a single family residence as of the assessment date of January 1, 2019. It is located in the Valley Vista subdivision in unincorporated Adams County. The subject improvement is 1,144 square feet of living area. There are 3 bedrooms and 2 bathrooms. The original age of construction was 1949. The subject residence is in original condition. It is determined that the improvements and construction are fair quality. The subject property’s actual value, as assigned by the assessor and affirmed County Board of Equalization (“CBOE”) below, as requested by Petitioners and Respondent in this appeal, and as concluded by the Board, are:

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| CBOE's Assigned Value: | \$ 292,000 |
| Respondent's Recommended Value: | \$ 290,000 |
| Petitioners' Requested Value: | \$ 200,000 |
| Board's Concluded Value: | \$ 280,000 |

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.

FINDINGS AND CONCLUSIONS

Ron and Kathleen Swift testified on their own behalf. Exhibit 1 included documentary and photographic evidence supporting the Petitioners' appeal: the tax year 2019 appealed Real

Property NOD, 2018 and 2019 tax bills, parts of the 2017 CBOE Appraisal Report by the Adams County Assessor, parts of the 2019 CBOE Appraisal Report by the Adams County Assessor and 13 pages of photos of deferred maintenance, condition and structural issues of the interior of the subject site. Petitioners questioned the increase in the assessor-assigned total value of the improvements from \$62,000 in 2018 to \$209,200 in 2019 – there have been no improvements to the subject in that time frame. Petitioners stated that the subfloor of one of the bathrooms is rotted out and needs replacement, that the aluminum case single pane windows and furnace are original, there is flooding in the basement during rain storms, there are settling cracks in the floor of the basement, the garage is separating from the house, the garage floor has settled and is now below the driveway pad, and the front and back porches including the back patio roof are falling away from the house. This testimony was supported by the photographic evidence. Petitioners assert that the Adams County CBOE has not taken into account the condition and structural issues present in the property in its assigned or appraisal report value.

The Respondent presented the testimony of Sarah Morehead, employed by the Adams County Assessor's office. Ms. Morehead testified to a Restricted Appraisal Report that she testified she authored and signed. Ms. Morehead does not hold an appraisal license in the state of Colorado. Ms. Morehead determined that the subject improvement appeared to be in fair condition and fair quality, that it has lack of updating, with deferred maintenance throughout and structural defects. Ms. Morehead identified 3 sales within 3 blocks of the subject property. The sales are all ranch style homes; the age of construction of the sales were within one year of the subject – only comparable 1 had an effective age that reflected upgrading. The sale prices before time adjustment ranged from \$255,000 to \$326,000. After adjustment for time, the sale prices ranged from \$297,100 to \$333,498. Adjustments were made for attached and detached garage, basement/basement finish, land size, patio size/roof, size of improvements above grade, bath count, and effective age. The adjusted sale prices and gross/net adjustments of the comparables ranged from \$289,884 for comparable sale one (gross adjustment 18.47%, net adjustment -2.44%); \$334,363 for comparable sale two (gross adjustment 12.49%, net adjustment 7.61%); and for comparable sale three \$337,163 (gross adjustment 22.98%, net adjustment 1.10%). Ms. Morehead testified that she relied on the lowest indicator of value of the comparables to account for the condition and structural and deferred maintenance items of the subject. The Respondent asks this Board to reduce the value of the subject to \$290,000.

The Board's assignment of weight to Ms. Morehead's valuation analysis, conclusions, selection of comparables, and adjustments was impacted by her lack of licensure, and the absence of a licensed co-signer on the Restricted Appraisal Report. Ms. Morehead acknowledged in testimony that given her lack of licensure that she was assisted with this report by her "boss." Yet on her Certification on page A23 it states "No one provided significant real property appraisal assistance to the person signing this certification." The Board sometimes admits appraisal reports authored under the name of an unlicensed assessors' office appraiser employee, but the usual practice is for these reports to be co-authored and co-signed by a licensed appraiser. These co-signed reports are given more weight by the Board, and the Board acknowledges their value as a training tool for unlicensed or newly licensed appraisal staff.

The Board was convinced by Petitioners' evidence that the value indicated by the Ms. Morehead's valuation did not adequately address the structural, condition and deferred

maintenance issues of the subject property. There is no or insufficient evidence in Ms. Morehead's comparable sales adjustment grid that reflects either the condition issues of the subject or the condition of the comparables. The Board determines that this is a deficiency in the value conclusion. Based on the testimony provided and evidence admitted, the Board determines that an additional \$12,000 adjustment from the CBOE-assigned value is appropriate to reflect the condition of the subject.

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

ORDER

The petition is **GRANTED**. The Adams County Assessor is ordered to reduce the value of the subject to \$280,000.

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 30th day of March, 2021.

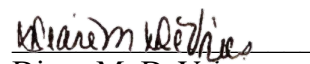
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel M. Forsyth

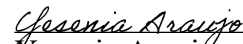
Concurring Board Member:



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.



Yesenia Araujo