

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79031
Petitioner: HNU CASA LLC, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 5, 2021, Samuel M. Forsyth and Valerie C. Bartell presiding. Dean Stansbury appeared pro se on behalf of the Petitioner HNU Casa LLC. Respondent was represented by Rachel Bender, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A. The Board accepted Respondent’s appraisal witness, Gregory Ketcham, as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

5549 S. Youngfield Way Littleton, CO 80127-2193
County Schedule No. 300184406

The subject property is a .12-acre site upon which is a 1,557 square foot residentially classed 2-story improvement. The improvements were originally constructed in 1991. There is an attached 420 square foot garage. The residence has two full bathrooms, two full baths and ½ bath and three bedrooms. There is a 518 square foot basement which is totally unfinished.

CBOE’s Assigned Value:	\$ 356,255
Respondent’s Recommended Value:	\$ 356,255
Petitioner’s Requested Value:	\$ 324,000

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, 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.

ARGUMENTS

Dean Stansbury testified on behalf of HNU Casa LLC. Mr. Stansbury stated that the assessment over the years on this property has not been fair, nor has it been representative of the market. Mr. Stansbury stated in Exhibit A, attached to the Petition to State Board of Assessment Appeals, that his property had sustained hail damage during the data collection period and that the damage had not been repaired as of the date of appraisal. The Petitioner stated that "An estimate of replacement/repair cost is \$18,450 by an Insurance claim." The Petitioner argued that the subject property's assessment had risen 31.7 % since 2015 and taxes have increased 20.5% in the same time frame. Mr. Stansbury presented that the inflation rate had averaged 3% per year. Applying

the 3% inflation rate per year to the value since 2015, Petitioner believes his value is more accurately set at \$295,550. Petitioner offered three sales that he says were properties with similar hail damage to the subject. The three sales ranged in sale price from \$250,000 to \$279,000, averaging \$264,700. The sale dates were September 2016, October 2016 and May 2017. The Petitioner calculated that the comparable sales yielded a sale price of \$120 per square foot of improvements. The Petitioner applied this factor to the subject's 1,557 square feet and concluded to a value of \$186,840 for the improvements. Adding \$70,000 for land yielded a total value of \$256,840. Petitioner offered that as evidence of his good faith he would accept a value of \$324,000.

The Respondent presented Greg Ketcham as an expert witness in the valuation of properties for Ad Valorem purposes. Mr. Ketcham holds an Ad Valorem License with the State of Colorado. He is an employee of the Jefferson County Assessor's office. Mr. Ketcham presented an Appraisal Report on the subject property. The appraisal was identified as Respondent's Exhibit A. Mr. Ketcham presented information about the condition of the subject property that was gleaned from resources in 2020. The Petitioner objected to this reference and asked the Board to disregard the information. The Board agreed and proceeds to judge the merits of the matter considering data derived from the data collection period ending June 30, 2018 only. Mr. Ketcham identified 4 sales in the subject neighborhood. All of the sales are 2 story design. All of the sales have 2 car garages. All are within 2 blocks of the subject. Mr. Ketcham determined adjustments for change in market conditions at time of sale, size of living area above grade, size of total basement, area of basement finish, bath count, covered patio/deck and air conditioning. No adjustment was made for condition of improvements despite comparable sales one, two and three having had "some updates." The time adjusted sales ranged from \$383,882 to \$422,626. After adjustments, the adjusted value of the comparables ranged from \$374,823 to \$387,525. Mr. Ketcham concluded to a value of the subject as of June 30, 2018, in its condition as of January 1, 2019, of \$382,000. Mr. Ketcham provided no expert appraisal insights as to how he arrived at this concluded value, that is, what characteristics he considered most important in this market and which of the comparables were given what weight – all determinations made in the reconciliation process. "The report of defined value, which is the last step in the valuation process, summarizes the data analyzed, the methods applied and the reasoning that led to the value conclusion." Appraisal Institute, *The Appraisal of Real Estate*, (Twelfth Edition, 2001), page 65.

FINDINGS

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2019 is incorrect.

The Petitioner provided sales in Exhibit 1 to support his contention that the subject property was over-valued. The Petitioner provided date of sale, address, sale price and county schedule number of each sale. Each sale was reported to be damaged in some way or another at time of sale. The Petitioner did not provide any details about the properties such as square footage above grade, basement/basement finish, age and location. Petitioner made no adjustments for time nor adjustments to the comparable sales' attributes, stating merely, without support, that the sales

indicated a value of \$120 per square foot of improvements. The Board concludes that the Petitioner did not prove that the assessor's valuation was incorrect.

The Board finds that methodology and approach to determining value by the Respondent to be sound and convincing, with the exception of Respondent's treatment of the subject's condition. Respondent identified 4 sales that were similar to the subject in size and attributes and were located proximate to the subject. Respondent proceeded to itemize the attributes of the subject and the comparables sales on a grid, and, except for the issue of condition which will be addressed below, made consistent and reasonable adjustments to the sales and concluded to a value that is bracketed among the adjusted values of the sales.

Testimony and documentary evidence indicate that there are items of deferred maintenance and lingering hail damage in the subject property. It is helpful to the Board when issues such as condition are part of the dispute concerning value that the County request an inspection. The Board recognizes that COVID-19 health protocols at the time prohibited field inspection. The County appropriately addressed this issue by asking the owner in lieu of a physical inspection to provide photographs of the maintenance issues and costs to cure from qualified contractors in the marketplace. Photos were provided by both parties in the Exhibits but qualified estimates of costs to cure were not. This hampered the Board's determination of whether appropriate adjustments to market value were applied to the subject property. The Board is convinced by both Mr. Stansbury's and Mr. Ketcham's testimony that the condition of the property has an impact on value. The Respondent's grid did not have an itemized line for condition, but did identify three comparables that had "some updates." The Board concludes that Mr. Ketcham did not adjust for condition on at least three of the comparables, but determines that his concluded value of \$382,800 after adjustment for condition nevertheless validates the CBOE value of \$356,255.

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.

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 22nd day of June, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel M. Forsyth



Concurring Board Member:



Valerie C. Bartell

*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