

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79108
Petitioner: CHASHINDOR, LLC, v. Respondent: DENVER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 20, 2020, Samuel M. Forsyth and Louesa Maricle presiding. Petitioner was represented by Stephen Rynerson, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-4 and Rebuttal Appraisal Exhibit 5 and Respondent’s Exhibit A. The parties agreed by stipulation to accept their respective witnesses as experts in the valuation of residential properties for ad valorem purposes. The Board admitted the witnesses as experts.

DESCRIPTION OF THE SUBJECT PROPERTY

888 S Adams, Denver CO 80209
County Schedule No.: 05135-08-017-000

The subject property is a 32,000 square foot site upon which is a 3,039 square foot residentially classed improvement. The improvement was originally constructed in 1980. The improvement was substantially remodeled and refurbished. The remodeling of the improvement rendered the use more conducive to office use rather than residential use. As currently laid out, there are five rooms, one full bath and two half baths. The kitchen is akin to an office “break room,” not a fully functioning kitchen normally seen in a residence. The zoning is S-SU-1 (Suburban Neighborhood-Single Unit 1). Petitioner’s appraisers state in their appraisal: “Office use is not permitted under the S-SU-1 zone district. However a home office (non-medical and non-

dental) is a permitted use with limitations under the Suburban Neighborhood zoning guidelines.” (Exhibit 5, p. 4.) Neither party makes a case that the use is conforming to zoning.

The Board is tasked with determining whether Petitioner has proved that the County’s valuation of the subject property is incorrect. To the extent the classification of the property affects its valuation, through the appraisers’ selection of comparable sales and otherwise, classification is a relevant issue for the Board’s consideration. However, both appraisers valued the property as a residential property, selecting single family residences as their comparable sales. Respondent’s appraiser pointed out that the subject likely does not qualify for residential classification, opined that the office use was illegal, identified the nonconformance of the subject’s use to zoning and covenants, and questioned the property’s classification. However, she appraised the subject under its current residential classification, applying the extraordinary assumption and hypothetical condition that it was a single family home. Although the record established the use of the subject property as other than residential, and the valuation determination was clouded due to classification factors, because there was no dispute for the Board to resolve regarding the classification of the subject property, the Board accepts the classification of the office-based improvement as residential for the purposes of this appeal.

Petitioner did not allow an interior inspection of the subject property. The Board’s practice is to encourage allowing access so that the Assessor’s Office can ensure the inventory, quality and use of the subject property is accurate, and to assist the Board in reaching an accurate valuation determination. An understanding of the interior of the subject was especially relevant in this case and denial of an inspection a point of concern to the Board. The Board is further troubled that the interior was configured as and finished for office use, that the remodeling was inconsistent with architectural plans provided to the city and county, and that the county was not made aware of the extent of remodel or the change of use until provided with the Petitioner’s first of two appraisals, dated May 1, 2020. Respondent indicated it may assess whether the property is properly classified for the coming tax year. For the purposes of this hearing and valuation for tax year 2019, the Board determines it was provided with sufficient valuation evidence to resolve the issues before it.

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

CBOE’s Assigned Value:	\$ 2,411,400
Respondent’s Recommended Value:	\$ 2,411,400
Petitioner’s Requested Value:	\$ 1,980,000

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

Petitioner called William M. James, MAI, CCIM. Mr. James testified to Exhibits 1 and 5, Appraisal Reports for the subject property, that he co-authored with Denise K. Moore. Mr. James is President and Director of James Real Estate Services, Inc. He is a licensed Certified General Appraiser by the State of Colorado. Ms. Moore is also associated with James Real Estate Services as a Director, Multifamily Valuation. Ms. Moore is a licensed Certified General Appraiser by the State of Colorado. Ms. Moore did not attend the hearing, nor did she testify. Exhibit 1 was an Appraisal Report of the subject property with an effective date of June 30, 2018. The date of the appraisal report was May 1, 2020. The appraisal concluded to a value of \$1,920,000. Exhibit 5 was an Appraisal Report of the subject property, also with an effective date of June 30, 2018. The date of the appraisal report was October 28, 2020. This appraisal was characterized as an “Update Actual Value Appraisal.” This appraisal concluded to a higher value than the May 1, 2020 report value of \$1,980,000. This exhibit was offered as a rebuttal exhibit. The authors of the updated appraisal stated under the section titled “Update Appraisal”:

This appraisal is intended to also serve as an update of previous appraisals conducted by the Appraiser and Associate. Reference is made to the appraisal report dated May 5 (sic), 2020 with an appraised value of \$1,920,000 which by reference,

is incorporated in this report. The difference in appraised value since the previous appraisal report appears to result in correction to the analysis following review of an appraisal prepared for the Denver Assessor.

(Exhibit 5, page 2 of 49).

Mr. James' appraisal identified nine comparable sales for analysis. The dates of sale ranged from October, 2016 to June, 2018. The average time between sale dates and appraisal date is 7 months. The average distance of the comparable sales from the subject is .33 mile. The total finished area of the subject is 3,039 square feet. The average total finished area of the comparable sales is 3,589 square feet. The site size of the subject is 32,300 square feet. The average site size of the comparable sales is 14,391. The floor area ratio (finished living area divided by site size) of the subject is .09 (3,039 square feet finished area/32,300 square feet). The average FAR of the comparables is .25.

Mr. James chose as his primary unit of comparison the time adjusted sale price divided by gross living area. To that variable, Mr. James made percentage adjustments for change in market conditions, location, site/view/access, age/quality/condition, gross living area, and other. Followings are elements and units of comparison that Mr. James identified, and descriptions of each factor from his appraisal.

- Time adjustments account for trends in property values experienced in the time between the date of sale of the comparable sales and the appraisal date. An average of 2% per month was applied to the time adjusted sale price per square foot of gross living area of each of the comparable sales.
- Location adjustments account for value differences resulting from the quality of surrounding development, exposure, access and competitiveness of the market sector of the comparison. Adjustment to time adjusted sale price per square foot of gross living area was made for six of the nine comparable sales. The upward adjustment for each of those sales was 5%. No sales were adjusted downward for having a superior location.
- Adjustments were made to account for differences in site size, views and access. Eight comparable sales are adjusted for these elements of comparison. All the sales had positive adjustments to the time adjusted sale prices per gross living area, indicating that these sales are inferior to the subject. The adjustments for the sales range from 42% to 100%, averaging 54%.
- Age/condition/quality adjustments account for differences in age, physical condition function utility, architectural attractiveness and overall quality. All of the comparables are given negative adjustments for these elements of comparison. Mr. James acknowledged that the subject is in like new condition based on the remodeling/refurbishing into office use. Mr. James consulted experts in the market who suggested that an adjustment of \$500,000 was reasonable to adapt the finish from office use to residential use. The adjustments account in part for this factor. The range of negative adjustment was -11% to -29%, averaging -21%.

- Gross living area accounts for differences in livable square footage. Mr. James' primary and initial unit of comparison was sale price divided by gross living area. The law of diminishing returns states that as the size of a property goes up, the price per square foot goes down; the more square footage you add, the less valuable each additional square foot is. As a result, upward adjustments are made to properties with larger square footage and downward adjustments are made to smaller properties. The adjustments range from +3% to -3%, averaging 2%.
- Mr. James identified garage/carport and deck/patio/porch as elements of comparison but made no adjustments to any of the comparables.
- The final element of comparison identified by Mr. James was characterized as "other." In the narrative, Mr. James described this category as accounting for factors that are unique to the subject or comparable sales with emphasis on the finished basement area of the subject and the sales. He adjusted all but one of the sales for this variable, and he determined all of the sales that were adjusted to be superior to the subject. The range of adjustments ranged from -1% to -3%, averaging -2%.

Based on the data presented in Mr. James' appraisal, the sale price divided by square foot of gross living area prior to the adjustments described ranges from \$328.74 to \$567.64, averaging \$465.39. The adjustments for the comparable sales range from a total of 3% to 82%, averaging 44%. The adjusted sale prices for all of the comparable sales range from approximately \$460.97 per square foot to \$1,057.70 per square foot. (Exhibit 5, p. 13.) Mr. James determined that the weighted average of the adjusted sale prices reconciles to a value of \$651.23 per square foot of living area of the subject of 3,039 square feet or \$1,980,000 (rounded).

The Respondent called as a witness Ms. Diana Chilcutt. Ms. Chilcutt is a licensed Certified Residential Appraiser employed with the Assessment Division of the Department of Finance of the City and County of Denver. Ms. Chilcutt testified that she requested an inspection of the subject improvement, but permission to conduct an inspection was not granted. This was not disputed in testimony or evidence. Ms. Chilcutt testified she relied on the layout and use of the improvement as office based on the original appraisal provided by the Petitioner. Three comparable sales were identified in Ms. Chilcutt's appraisal. Ms. Chilcutt made individual quantified adjustments for the following variables: change in market conditions (time), land size, bedroom/bath count, finished area, basement, basement finish, and condition/effective age/functional obsolescence.

- The dates of sale of the three comparables were: Sale One – January, 2017; Sale Two – October, 2017; Sale Three – January 2018. The average number of months of the date of sale from the appraisal date is 11 months; and adjustment for time is .47660% per month.
- Site sizes were: Sale One – 13,000 square feet; Sale Two – 6,121 square feet; and Sale Three – 30,300 square feet. The average site size was 16,474 square feet; site size adjustments were based on \$60 per square foot x 40%.
- Sale One has eight rooms, three bedrooms, three full baths; Sale Two has seven rooms, three bedrooms, four full and one ½ bath; Sale Three has eight rooms, four bedrooms, four

baths. Bath adjustment is \$50,000 per full bath and \$20,000 per ½ bath.

- Sale One has 3,202 finished living area square feet; Sale Two has 3,083 finished living area square feet; Sale Three has 4,571 square feet. The living area adjustment is \$150 per square foot – comparable 2 living area square footage is \$44 per square foot larger than subject and is not adjusted. The adjustment for Sale Three is miscalculated – it is \$168 rather than \$150 per square foot.
- Basement size for Sale One is 869 square feet; Sale Two is 1,225 square feet; Sale Three has no basement. Basement square footage adjustment is \$75 per square foot.
- The subject basement is determined to be unfinished despite mechanical improvements intended to serve the next-door property. Sale One has 400 finished square feet; Sale Two has 1,084 finished square feet. The adjustment for finished square footage is \$50 square feet.
- Condition/Effective Age – Sale One was adjusted \$845,600; Sale Two was adjusted 683,700; Sale Three was adjusted \$1,443,800. The adjustment for this variable was derived from 11 sales that were remodeled subsequent to sale and resold – the median resale was 64%; the adjustment is calculated at 64% of sale price less the allocated lot size adjustment determined by Ms. Chilcutt.
- Each sale is adjusted to reflect the cost to convert the office finish of the subject to residential use finish; the adjustment for each comparable is -\$500,000.
- Qualitative adjustments were made to View, Design, Age, Condition, Garage/Carport, Fireplace. The Board does not discern from Ms. Chilcutt’s analysis any quantitative effect on the adjusted sale prices of the comparable sales based on these qualitative adjustments.

Ms. Chilcutt arrived at the following adjusted sale prices subsequent to the quantitative adjustments: Sale One - \$2,921,800; Sale Two - \$2,776,900; Sale Three - \$3,042,700. Ms. Chilcutt concludes to a reconciled value of \$2,921,800. The Denver County Board of Equalization asks this Board to sustain the CBOE value of \$2,411,400.

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 Board determines that the methodology employed by the Respondent more appropriately determines the market value of the subject property. Petitioner’s methodology, on the other hand, is not as understandable as Respondent’s, and is atypical of residential appraisals.

Petitioner's expert witness, Mr. James, stated in his appraisal: "For a single family residence such as the subject, these sales are best analyzed based on sale price per gross living area." (Exhibit 5, page 10.) The Board disagrees with this approach, finding that most residential appraisers do not focus on or apply adjustments to the price per gross living area unit of comparison, but instead base their analysis on the total price. That method avoids price per square foot inaccuracies if the appraiser errs in using square footage that is anything other than the gross living area. "While it is possible to calculate a price per square foot of gross living area for a house, most residential appraisers do not focus on that unit of comparison, but instead base the analysis on the total price." Appraisal Institute, *The Appraisal of Real Estate* (15th ed., 2020), Ch. 20, p. 360. The Board identifies that there are several important variables of homes in this market including but not limited to gross living area, site size, condition/effective age of improvements, and in the case of this property the cost to convert the improvements from office use to residential use.

Mr. James first determined the sale price per square foot of living area, then applied percentage adjustments to that unit of comparison (rather than to total price) based on the elements of comparison listed above. It is not clear which square footage of improvements of the comparables was used by Mr. James. Mr. James stated that the sales were analyzed based on sale price per gross living area. The adjustment grid in Exhibit 5 does not state this variable directly – the nomenclature are "Total SF" and "Living Area". Mr. James' calculated sale price per gross living area ranges from \$378.24 to \$557.61, averaging \$465.93. Using the square feet associated with the title "Total SF," the values of sale price per "Total SF" range from \$457.52 to \$687.02, averaging \$585.93. Using the square feet associated with "Living Area," the sale prices per "Living Area" range from \$378.24 to \$505.95, averaging \$449.44. Nevertheless, the Board's analysis applies equally, whichever range was used.

In addition, the Board finds that Mr. James' market adjustments lacked support. Mr. James lumped several variables into the categories for which adjustments were applied, then calculated vaguely explained percentage adjustments, which he applied to the sale price per square foot. Moreover, the Board finds that clarity as to value was also obscured by the variety and number of comparable sales used by Petitioner's expert.

In sum, the Board finds the methodology of initially determining a sale price per square foot, then applying vaguely defined percentage adjustment factors, to be too imprecise a methodology to result in a credible conclusion of value.

In contrast, the Respondent's expert identified discrete variables that are recognized by the market and applied quantitative adjustments that are clearly explained. As to the nature of Ms. Chilcutt's adjustments, while the Board recognizes that the net and gross quantified adjustments are large, the Board determines that the nature of the home (having been updated), site (being so much larger than typical) and neighborhood (proximate to the historic Phipps Mansion) justify the size of the adjustments. Overall, the Board finds the adjustments of the Respondent's expert's appraisal supported. On the other hand, as discussed above, the Board finds Petitioner's expert witness' methodology to be questionable for this class of property, and too vague and unsupported to yield a credible result.

The Board finds that Petitioner failed to meet its burden of proving that the County-assigned value for tax year 2019 was incorrect.

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 14th day of June, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel M. Forsyth



Concurring Board Member:

Louesa Maricle
*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