

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79334
Petitioners: MARLA R. ROSE and RICHARD M. ROSE, JR., v. Respondent: JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on February 25, 2021, Amy Williams and Valerie Bartell presiding. Petitioners Marla R. Rose and Richard M. Rose, Jr. appeared pro se. Respondent was represented by Rachel Bender, Esq., Assistant County Attorney for Jefferson County. Petitioners appeal the actual value of the subject property for tax year 2019.

EXHIBITS

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

DESCRIPTION OF THE SUBJECT PROPERTY

The property subject of the hearing is comprised of eight separately parceled condominium units in one subdivision – the Hazlet Condos subdivision. Petitioners hold ownership of all eight units. They are platted as condominiums.

Address: 1330 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197742

Address: 1332 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197743

Address: 1334 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197744

Address: 1336 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197745

Address: 1338 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197746

Address: 1344 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197747

Address: 1346 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197748

Address: 1348 Marshall Street, Lakewood, CO 80214
County Schedule No.: 300197749

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioners, are:

Property Schedule No.	CBOE's Assigned Value	Petitioners' Requested Value	Board's Concluded Value
300197742	\$182,361	\$109,375	\$182,361
300197743	\$193,620	\$109,375	\$193,620
300197744	\$201,080	\$109,375	\$201,080
300197745	\$150,470	\$109,375	\$150,470
300197746	\$161,142	\$109,375	\$161,142
300197747	\$204,037	\$109,375	\$204,037
300197748	\$162,473	\$109,375	\$162,473
300197749	\$169,276	\$109,375	\$169,276

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 or classification 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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. See *id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

ARGUMENT

The Board heard the testimony of Petitioner Richard M. Rose, Jr. Petitioner testified that for the following reasons, the subject should be assigned a value lower than what was established by the Jefferson County Board of County Commissioners. First, Petitioner testified that the Actual Value assigned to the property represented a 140 percent increase over the Actual Value assigned to the property in the prior year. Second, Mr. Rose testified that the subject condominiums would be generally inferior to any condominium sales selected by Respondent because the subject

operates as an apartment building, and should not be classified as condominium units. He asserted the units should not be classified and could not be sold as condominium units because there are no party wall agreements, and no homeowners' association. Mr. Rose further testified that the units are insured as a multi-family unit. Mr. Rose argued they should be classified and valued as apartments. Lastly, Petitioner testified that the location of the subject was proximate to a commercial lot, a negative influence on the property value. Petitioner did not provide any comparable sales to the Board for consideration.

Respondent provided an appraisal report by Alyssa Hicks, Residential Appraiser, employed by the Jefferson County Assessor's office, which the Board admitted as Exhibit A. Ms. Hicks testified concerning her appraisal. For tax year 2019, the Jefferson County Assessor's Office classified the subject property as residential, in a subclass of residential condominium. The report assumes the current use, residential condominium, to be the highest and best use, and utilizes residential condominium comparable sales to estimate an opinion of value. The estimated opinion of value was concluded to be as follows:

Parcel No.	Value
300197742	\$201,600
300197743	\$203,400
300197744	\$204,700
300197745	\$181,000
300197746	\$212,700
300197747	\$204,600
300197748	\$185,200
300197749	\$189,800

FINDINGS AND CONCLUSIONS

The Board rejects Petitioners' contention that the County's classification of the subject as condominiums was incorrect.

A condominium is a single real estate unit in a multi unit development in which a person has both separate ownership of a unit and a common ownership interest, along with the development's other owners, in the common areas. A condominium declaration and plat, which define the character, duration, rights, obligations,

limitations of ownership, and physical location, are filed with the clerk and recorder.

2 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 6, at 6.24 (rev. Jan. 2021). The subject property is comprised of eight separate, individually platted residential condominium units – Ms. Hicks' appraisal report included the plat map for the subject. (Exhibit A, pp. 16-17.) The plat map states it is “prepared pursuant to the purposes stated in the Condominium Declaration for the Hazlet Condominiums...” (Exhibit A, p. 16.)

Mr. Rose testified that a reclassification of the property had taken place around October 14, 2020. The Board infers from the testimony that the plat may have been vacated as of that date, and/or the condominium declaration terminated. However, for tax year 2019, the subject must be classified and valued, per Colorado statute, according to its physical characteristics and condition on January 1, 2019 – the assessment date. § 39-1-105, C.R.S.; 2 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 6, at 6.1 (rev. Jan. 2021). The subject property must be valued as of an effective appraisal date of June 30, 2018. A change in classification or use that took place in October 2020 is not relevant to the 2019 tax year.

On the assessment date, and on the effective appraisal date, the subject property consisted of eight individually saleable condominium units. The Assessor does not have the option to value the subject as an assemblage of properties or as an apartment complex for tax year 2019.

The Board finds that Ms. Hicks' appraisal report adequately supports the Actual Value assigned by the Jefferson County Board of County Commissioners. She selected comparable residential condominium sales, some on the same street as the subject. The Board further finds that the comparable sales provided in Exhibit A adequately capture the locational attributes of the subject. Lastly, the Board finds that Petitioners did not provide any evidence to justify application of an adjustment for the existence of an HOA or party wall agreement at the comparable sales.

While the Board understands Petitioners' dilemma regarding the Actual Value increase over the prior year, the issue for the Board's resolution is whether the Petitioners have shown that the County incorrectly valued the property for tax year 2019. The values assigned to the subject in prior tax years are generally not relevant to this determination. The County acted in accordance with constitutional and statutory requirements when it valued this residential property using sales of comparable properties that sold during the statutorily defined time period.

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 19th day of May, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie C. Bartell

Concurring Board Member:



Amy Williams

*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