

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioners:

DICK R. MURPHY AND M. VALARIE MURPHY,

v.

Respondent:

BOULDER COUNTY BOARD OF EQUALIZATION.

Attorney or Party Without Attorney for the Petitioners:

Name: M. Valarie Murphy
Address: 1548 Oak Avenue
Boulder, Colorado 80304
Phone Number: (303) 443-6869
E-mail: val@wyosip.com

Docket Number: 43150

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 20, 2004, Diane M. DeVries and Judee Nuechter presiding. Petitioners appeared pro se. Respondent was represented by Michael A. Koertje, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1546 Oak Avenue, Boulder, CO
(Boulder County Schedule No. R0099891)**

Petitioners are protesting the 2003 actual value of the subject property, a 9,770 square foot parcel of vacant land.

ISSUES:

Petitioners:

Petitioners contend that the subject vacant residential parcel in the City of Boulder has been excessively valued by the Respondent for tax year 2003.

Respondent:

Respondent contends that the subject property was correctly valued. The subject property is a vacant lot adjacent to the Petitioners' residence. The present zoning allows a two-story residence to be built on the lot.

FINDINGS OF FACT:

1. Ms. M. Valarie Murphy, Petitioner, presented the appeal on behalf of the Petitioners.
2. Based on the market approach, Petitioners presented an indicated value of \$158,000.00 for the subject property.
3. As indicated in Petitioners' Exhibit G, Petitioners presented four comparable sales ranging in sales price from \$170,000.00 to \$390,000.00 and in size from 9,971 to 31,548 square feet. After adjustments were made, the sales ranged from \$157,245.00 to \$295,080.00. Two of those comparable sales sold outside the January 1, 2001 through June 30, 2002 base period. Three of the Petitioners' four comparable sales are multiple lots upon which two or three dwellings could be built whereas the subject is a single lot.
4. Ms. Murphy testified that all relevant sales and the future use of the property were not considered by the Respondent in the valuation of the vacant lot.
5. Ms. Murphy testified regarding present and future use and that a reasonable future use is relevant to value. The subject property is landscaped and fenced and is used as part of their adjacent dwelling. The Respondent did not consider that the Petitioners have no plans to sell the subject parcel. When two or more adjacent tracts are owned by the same parties, they may be valued collectively, but do not have to be joined as one.
6. Petitioners indicated that the Respondent's comparable sales are luxury lots with street access. The subject property is not conducive for luxury dwellings. She feels that the Respondent did not use the more comparable sales that were available. The Respondent included improved properties instead of all vacant lot comparable sales. There were insufficient adjustments for differences in size, location or views. The City of Boulder will allow a 1,250 square foot footprint on the subject parcel and the Respondent's comparable sales allow much larger footprints.

7. Ms. Murphy testified the subject parcel is located between two run-down rental dwellings and is surrounded on all four sides by existing dwellings.

8. During cross-examination, Ms. Murphy testified that they had not attempted to legally combine the subject lot with the existing residential dwelling. At this time, the Petitioners could sell the vacant lot, although that is not their intention.

9. The Petitioners feel that a 2003 actual value of \$165,000.00 is a fair value for this hearing.

10. Petitioners' witness, Mr. William Kamen, a Certified General Appraiser with Appraisal Consultants, Inc., testified that he physically inspected the subject property at the request of Ms. Murphy. He analyzed and adjusted appropriate comparable sales which were similar in size and location with the same time trend adjustment that the Respondent utilized in order to form an opinion of value. Based on his analysis, he determined an actual value of \$185,000.00 as of June 30, 2002 for the subject property.

11. During cross-examination, the Petitioners' witness testified that he does not typically look at every sale when comparing properties. Approximately five percent of his appraisal reports are for vacant land and there is a higher demand for residential or developed properties in the marketplace. The subject lot is considered an in-fill lot and will most likely be used for a future dwelling.

12. The Board questioned the witness as to his knowledge of the vacant land sales used in his report regarding whether he was aware if any of the comparable sales might have sold to an adjacent land-owner. He did not know the answer.

13. Respondent's witness, Mr. Samuel M. Forsyth, a Certified Residential Appraiser with the Boulder County Assessor's Office, presented an indicated value of \$255,000.00 for the subject property, based on the market approach. Mr. Forsyth indicated that the Boulder County Assessor's Office was recommending a reduction in value to \$225,000.00 at this hearing.

14. Mr. Forsyth testified that in the 1990's, a density transfer process was initiated by the city of Boulder. The Murphys transferred, from the parcel they had built on to the subject parcel, a 1,250 square foot footprint which could include two stories and a basement.

15. Respondent's witness testified that the sales he utilized were based on comparability to the subject property. He determined all sales were arm's length transactions. All sales are in the same neighborhood as the subject property. Two additional comparable sales with improvements and similar site size were also shown in his report. An abstraction analysis with the contributory value of the improvements was applied to determine the value of the vacant land.

16. Mr. Forsyth testified that the base period is from January 1, 2001 to June 30, 2002; however, Colorado Revised Statutes allow usage of sales in six-month increments up to five years preceding June 30, 2002 when there are limited similar comparable sales available.

17. Respondent's witness presented three comparable vacant land sales ranging in sales price from \$370,000.00 to \$405,000.00 and in size from 18,881 to 22,378 square feet. After adjustments were made, the sales ranged from \$295,790.00 to \$318,920.00. Two additional comparable sales of improved properties were also presented ranging in sales price from \$490,000.00 to \$528,000.00. After time adjustments and abstraction of improvement values were made, these comparable sales ranged in value from \$328,929.00 to \$346,394.00 and in size from 5,067 to 10,396 square feet. As detailed on pages 13 and 14 of Respondent's Exhibit 1A, Mr. Forsyth made further adjustments to all of the Respondent's comparable sales to reflect the subject's restricted footprint, resulting in the indicated opinion of market value of \$255,000.00 in the appraisal report. Mr. Forsyth requested that the Board reduce the value to \$225,000.00 based on his further review of his appraisal and Petitioners' exhibits.

18. The Respondent's witness presented an analysis of Mr. Kamen's appraisal. He indicated that the seller of comparable sale 1 also owned the adjacent dwelling and a restriction was placed on the sale for access to his dwelling. This comparable is near a low-income housing development, a school, and had an access easement shared by five different properties. The lot backs to Broadway, the busiest street in Boulder which carries about 30,000 cars per day, and is considered inferior to the subject property. Comparable sale 2 was not in the Multiple Listing Service when it sold. Mr. Forsyth contacted the purchaser who indicated that he started calling people to buy a piece of property until someone offered to sell the land. He received an interest free loan for 50 percent loan to sale price and at the time of purchase there was no infrastructure or road to the lot, although it had been approved by the city. Mr. Forsyth felt the Petitioners' appraiser did not adequately or appropriately apply adjustments for differences in sites. Comparable sale 3 was not listed in the Multiple Listing Service and therefore may not have been offered on the open market. The buyer for comparable sale 4 was related to the developer of the subdivision and may not have truly sold on the open market.

19. Under cross-examination, the Respondent's witness testified that a cash sale vs. a contract sale would not warrant an adjustment. He does not know if the comparable sales in Petitioners' Exhibit H were actual open market transactions. The Petitioners' driveway for the subject property provides access for four other properties.

20. Respondent assigned an actual value of \$295,000.00 to the subject property for tax year 2003 but is requesting a reduction in value to \$225,000.00 based on the site specific appraisal report.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2003.

2. The Board considered that the appraisal report provided by Petitioners' witness, Mr. Kamen, was of more value than the comparable sales presented by the Petitioners based on his appraiser qualifications. Mr. Kamen's report was reviewed and the Board agrees that appropriate adjustments for location and site size were not made in the report. The Board agrees with Respondent that some of the comparable sales may not have been open market transactions.

3. The Board was presented insufficient data to accurately adjust the comparable sales presented by the Petitioners; therefore, the Board is unable to rely on the sales.

4. The Respondent provided a well-documented appraisal report with appropriate adjustments for the subject's site size and restricted footprint. The Board took into consideration the lack of adjustments to the comparable sales in this report for the subject's allowable footprint as compared to the un-restricted building site of the comparables in addition to the differences in zoning. This Board did not consider the improved comparable sales presented by the Respondent due to the inability to adequately adjust the improvements.

5. This Board cannot consider future use in valuing the subject property for ad valorem purposes. The Board must consider current use of the subject property on the date of assessment.

6. After careful consideration of all of the testimony and evidence presented, the Board accepts Respondent's request that the actual value of the subject property should be reduced to \$225,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$225,000.00. The Boulder County Assessor is directed to change his/her records accordingly.

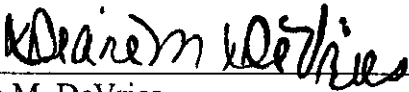
APPEAL:

Petitioners may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

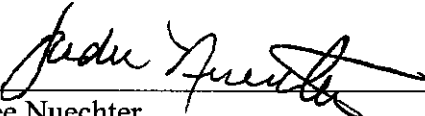
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 14th day of January, 2005.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries

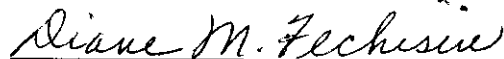


Judee Nuechter

This decision was put on the record

JAN 14 2005

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Diane M. Fechisin

