

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

Docket No.: 68926

Petitioner:

JOSEPH H. THIBODEAU,

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 21, 2016, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Norman H. Wright, Esq. Respondent was represented by Noah Cecil, Esq. Petitioner is protesting the 2014 actual value of the subject property.

Subject property is described as follows:

**450 Clermont Street Parkway
Denver, CO 80220
Denver County Schedule No. 06072-14-001-000**

The subject property consists of a single family residential dwelling constructed in 1937 in the Crestmoor/Hilltop area. The building contains 3,043 square feet of living area above grade and a 996 square foot basement with 90% finish. The home is located on a 9,380 square foot site.

Petitioner is requesting an actual value of \$803,800 for the subject property for tax year 2014. Respondent assigned a value of \$1,169,700 for the subject property for tax year 2014 but is recommending a reduction to \$1,150,000 based upon a site specific appraisal report.

At the onset of the hearing, Petitioner moved to exclude Respondent's Exhibit A and Exhibit B on the basis of hearsay and relevancy. According to Petitioner, Respondent's exhibits contained unauthenticated photographs and written materials which constituted hearsay and information gathered beyond the base period was irrelevant and therefore inadmissible. The Board considered

the arguments presented by both sides and ultimately allowed the admission of Respondent's Exhibits A and B as well as Petitioner's Exhibits 3-1 and 4.

Parties' Arguments

Petitioner argues that the 2014 (intervening year) valuation of the subject property should be the same as the 2013 (base year) valuation. According to Petitioner, Respondent had no proof of change to the property which would have justified the increase in value. Further, Petitioner stated that Respondent was not authorized to change the valuation of the subject property by relying upon sales information gathered outside of the base period. Petitioner requested the Assessor return the property to its original assigned value of \$803,800 for tax year 2014.

Respondent countered that the Assessor had the right to raise values in the intervening year on the basis of either error correction or unusual conditions. Respondent argued that standard confirmation procedures within the Assessor's Office revealed the subject's condition relative to 2014 valuation to be substantially superior to that of previously determined by the Assessor as of 2013. The confirmation resulted in an upgrade of the subject condition in the Assessor's records from "average" to "good" due to remodeling that occurred prior to 2013 but was unknown to the Assessor. Respondent learned of the upgrades from the Multi-List System (MLS). According to Respondent, the difference in value between properties in "average" condition and "good" condition in the subject neighborhood is substantial and required the Assessor to modify the assigned value.

Respondent presented a value of \$1,150,000 for the subject property for tax year 2014 based on the market approach.

Respondent's witness Mr. Rick Armstrong, a Certified Residential Appraiser, was admitted as an expert witness. Mr. Armstrong presented a market approach (sales comparison approach) utilizing three comparable sales ranging in sale price from \$873,000 to \$1,525,000 and in size from 3,154 to 3,205 square feet. Two of the sales took place during the base period and one sale during the extended base period. After adjustments were made, the sales ranged from \$1,101,266 to \$1,249,800.

Mr. Armstrong adjusted the comparable sales for concessions, lot size, view, condition, bathrooms, basement size and finish, central air conditioning, car storage and fireplaces. In his reconciliation, the witness noted Sale 1 was demolished after purchase and Sale 3 represented the lower end of the value range in the neighborhood. Giving some weight to the current assigned value of \$1,169,700, Mr. Armstrong concluded to a final value opinion of \$1,150,000.

Petitioner objected to Mr. Armstrong's valuation, again on the basis of hearsay for his reliance upon MLS information and because Mr. Armstrong had not inspected the interior of the subject. Petitioner pointed to Exhibit 3-1, the mass appraisal report developed for the subject for the 2013 tax year, where the value conclusion was \$803,800. Petitioner questioned Mr. Armstrong's use of Sale 2 in that report (375 Ash Street) and Sale 5 (4500 E 1st Avenue) in the updated valuation. Petitioner questioned why Sale 2, when used in Mr. Armstrong's updated analysis, was now reflecting a value nearly \$290,000 greater than before and Sale 5, when used in the updated analysis, now reflects a value increase of over \$285,000.

Petitioner called Ms. Pamela Kelly as a rebuttal witness. Ms. Kelly identified herself as an interior designer who lives in and is familiar with the subject neighborhood. The witness described her employment by the previous owner of the subject, Dr. Shaw, in managing some updates in 2009. The updates involved cabinet re-facing, kitchen counters, sink, appliances and stair runners. Ms. Kelly disagreed with the comment the home had a new "gourmet" kitchen and testified that the only other improvements with which she was involved were some window coverings and other cosmetics. Under further questioning by Respondent, the witness testified the improvements shown in Respondent's Exhibit A, pages 4 through 6, were representative of the property interior as of 2009 based on her memory. Ms. Kelly estimated the overall cost for her updates to be less than \$10,000.

Petitioner also submitted Exhibit 4, a summary of the permit activity on the property. Exhibit 4-1 identified 8 permits were issued in the period from October 11, 1994 through November 29, 2000. The Exhibit indicated \$29,826 as the total cost of work to be performed. Exhibit 4-2 illustrated the type of work permitted with the largest expenditure reported to be \$12,996 for roof maintenance in 1998.

Petitioner contended the Assessor has inappropriately increased the value of the subject in the intervening year without a factual basis for doing so. According to Petitioner, Respondent's Exhibits A and B are inadmissible hearsay. In support, Petitioner noted Respondent's witness repeatedly testified that he "believed"; or, that he "assumed"; or, that it was his "opinion"; or, that something "must have been done" to explain the subject's 2013 sale price.

Petitioner argued that the work at the subject was minor, constituting a mere "brightening" or "refreshing" or a "redecorating" and in no event amounted to "remodeling." Petitioner pointed out that the definition of "remodel" within Merriam Webster's Collegiate Dictionary 989 (10th ed. 1993) means "to alter the structure of" or "remake." Petitioner claimed, based on the testimony of Ms. Kelly, there was only about \$10,000 in recent improvements and less than \$30,000 in permitted repairs to the property since 1994. According to Petitioner, the home was simply "refreshed" or given a "face lift" and, as such, there was no unusual condition justifying the value increase. Petitioner also claimed Respondent's witness, Mr. Armstrong, failed to view or inspect the subject or any of the comparable sales relied upon in the 2013 and 2014 valuations and "cherry picked" and changed the features of the sales used in both the 2013 and 2014 reports. Additionally Petitioner asserted the information contained within the MLS is "promotional material" and patently false based upon the testimony of Ms. Kelly.

Respondent contended the January 1, 2013 valuation of the subject resulted in an incorrect value. In support of this contention Respondent provided testimony from a qualified appraiser, an independent appraisal and documentary evidence. Respondent dismissed Petitioner's claim that information provided by the MLS is hearsay noting reliance upon such source is explicitly permitted under the Colorado Rules of Evidence, Rule 703 as well as the Colorado Administrative Procedure Act. Respondent, pointing to Exhibit B (MLS listing), noted the property description indicates the kitchen, plumbing, electrical and bath were renovated. Petitioner's witness (Ms. Kelly) verified the interior pictures included with the MLS data were representative of the subject's condition as of 2009. Respondent rejected Petitioner's reliance upon the third party information on historical permits provided by "Build Fax" as no evidence was presented regarding this data source and its reliability.

Respondent rejected Petitioner's Exhibit 4 (copies of 8 permits issued on the property) as not illustrative of the true property condition pointing out the renovations noted in Exhibit B might easily have been done without a permit. Respondent asserted the question is not when the renovations were done or even necessarily about the cost. The question to be considered is whether the property was truly "average" as of the valuation date or was the property condition "good"? Respondent also noted the Assessor had no current information regarding the property interior since the owner has refused access for an inspection.

The Board's Findings

1. For the 2013 reassessment year, Respondent valued the subject property at \$803,800. In valuing the subject, Respondent relied on the best information available at the Assessor's Office, as Respondent's repeated requests to inspect the property were denied by the owner. Considering the subject's 1938 date of construction, Respondent made an extraordinary assumption in assigning an "average" condition to the subject. According to the testimony of Mr. Armstrong, an "average" condition is typically assigned to 1930s brick properties in the subject neighborhood which have not undergone renovations.

2. The subject property was listed for sale within the MLS on June 28, 2013 and was sold to the current owner, Petitioner, on July 29, 2013. The MLS provided descriptions of the subject property and numerous photographs of the interior. In the relevant part, the MLS described the condition of the subject as follows: "... brand new gourmet kitchen, bathrooms, copper pipes, electrical and wine cellar, hardwood floors throughout..."

3. In the course of the standard sales verification process, the Assessor's Office examined the 2013 MLS listing and sales record for the subject and determined that the condition of the property was "above average." Therefore, the Assessor's office updated its records for the subject changing the subject's condition from "average" to "good." Respondent then revalued the subject property taking into consideration the subject's condition as "good" which resulted in an increased value for the subject for 2014.

4. Petitioner appealed Respondent's 2014 valuation of the subject arguing that the Assessor improperly increased the 2014 value to \$1,169,700 from the 2013 base-year valuation of \$803,800. According to Petitioner, the increase in value was unauthorized as there was no "unusual condition" which would justify the Assessor's revaluation per Section 39-1-104(11)(b), C.R.S.

5. At the hearing, Petitioner presented testimony of an interior designer who testified to performing professional upgrading work on the subject in 2009. Petitioner's witness testified that based on her recollection, the recent MLS photos of the subject reflected the condition of the property as it existed in 2009.

6. Colorado's property tax statutes provide for the biennial appraisal and valuation of real and personal property for property tax purposes. Section 39-1-104(10.2)(a), C.R.S. Specifically, in an odd-numbered year, e.g. the "reassessment" year, the assessor determines the actual value of property and this actual value is generally carried over to the following even-numbered year, e.g., the

“intervening” tax year. See § 39-1-104(10.2)(a); see also *Cherry Hills Country Club v. Bd. of Cnty. Comm’rs*, 832 P.2d 1105, 1109 (Colo.App.1992) (observing that, absent certain statutory exceptions, the valuations of a taxpayer’s property should be the same for both years in a reassessment cycle).

7. Section 39-1-104(11)(b)(I), C.R.S., however, allows an assessor to amend a property’s actual value in an intervening year when certain conditions are met. If the reassessment year valuation has been determined to be correct, then the intervening year valuation must not deviate from the correct reassessment year valuation absent “unusual conditions” as defined by the statute. On the other hand, when the reassessment year valuation is incorrect, no such proof of unusual condition is necessary; the statute authorizes the assessor to revalue the property for the intervening year to reflect a correct level of value. See Section 39-1-104(11)(b)(I):

If any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value; however, the assessor shall not revalue such property above or below its correct level of value except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition.

8. Thus, the statute requires a county assessor to correct an incorrect assessment in or between base years, regardless of the existence of any unusual conditions. § 39-1-104(11)(b)(I); *24, Inc. v. Bd. of Equalization*, 800 P.2d 1366, 1369 (Colo. App. 1990).

9. The evidence presented to the Board during the hearing demonstrated that the subject property was incorrectly assessed for the 2013 reassessment tax year. For the 2013 tax year, the subject should have been assessed “according to its taxable status, use, and condition on the assessment date.” Assessor’s Reference Library, Vol. 2, Sec. 2.6. (Emphasis added). The Assessor’s 2013 valuation of the subject was based on an incorrect assumption that the property’s condition was “average.” Based on the evidence provided at the hearing, the Board is persuaded that the subject property was, in fact, in “above average” condition as of the January 1, 2013 assessment date. Because the property has not been assessed at a correct level of value in 2013, Respondent was permitted to revalue the subject for the 2014 intervening year per Section 39-1-104 (11)(b)(I), C.R.S. The Board found Respondent’s appraisal of the subject property persuasive and Respondent’s value conclusion of \$1,150,000 well-supported.

Petitioner provided insufficient probative evidence to convince the Board that the 2014 value of the subject property should be reduced a value below that determined by Respondent at \$1,150,000.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 2014 actual value for the subject property of \$1,150,000.

The Denver County Assessor is directed to change his/her records accordingly.

APPEAL:

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 when Respondent alleges procedural errors or errors of law by the Board.

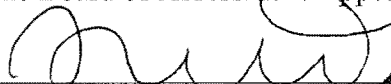
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

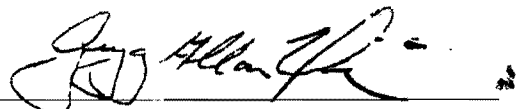
Section 39-10-114.5(2), C.R.S.

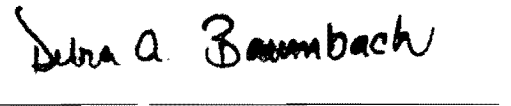
DATED and MAILED this 23rd day of February, 2017.

BOARD OF ASSESSMENT APPEALS

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


Milla Lishchuk


Gregg Near


Debra A. Baumbach

