

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 75600
Petitioners: DAVID L. NOVOTNY and DEBBI L. NOVOTNY, v. Respondent: CLEAR CREEK COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on January 2, 2020, Gregg Near and Debra A. Baumbach presiding. During the course of that hearing, the Board allowed a continuance to allow Respondent to complete an interior inspection of the subject property so as to correctly identify the property characteristics and property condition. The hearing on this matter was reconvened on March 16, 2020. Petitioner David L. Novotny represented both himself and Debbi L. Novotny. Respondent was represented by Robert W. Loeffler, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibits 1 through 6 and Respondent’s Exhibits A through E, and expert testimony by Respondent’s witnesses Diane Marie Settle, Certified General Appraiser and Clear Creek County Assessor, and Donna A. Gee, Ad Valorem Appraiser employed by the Clear Creek County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

121 Mill Creek Road, Dumont, Colorado
Clear Creek County Schedule No.: R003107

The subject property improvements consist of a one-story residence built in 1890. There is a total of 1,327 square feet of living area with a 1,088-square-foot porch added in 2014. There is one bedroom and one bathroom. The residence is rated as fair quality of construction and in fair condition. The residence is situated on 0.854 acres and located less than a mile north of I-70.

The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by the parties, are:

CBOE’s Assigned Value:	\$181,200
Respondent’s Recommended Value:	\$178,000
Petitioners’ Requested Value:	\$106,000 or \$114,005

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, a 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 board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.* However, 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. (2019).

APPLICABLE LAW

In valuing residential properties for tax purposes, value must be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), 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.

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Co. v. Arapahoe Cty. Bd. of Equalization*, 813 P.2d 768, 770 (Colo. App. 1990). Furthermore, equalization evidence, by itself, does not satisfy the requirement to provide comparable sales with appropriate adjustment. As the Colorado Supreme Court stated in *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 18 n.12 (Colo. 1997):

While the valuation of property similarly situated is credible evidence at trial pursuant to § 39-8-108(5)(b), C.R.S. (1994), a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider equalization evidence as support for a value determined using the market approach. *See id.*

At certain scheduled times, certain rule-making agencies must review their rules and, for each rule, the agency must consider “[w]hether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents.” § 24-4-103.3(1)(h), C.R.S. (2019).

THE BOARD’S FINDINGS AND CONCLUSIONS

I. Equalization Evidence

Petitioners contend that the percentage increase of the subject property is well above the percentage increases of most other properties valued by the Clear Creek County Assessor’s Office (“Assessor”). Mr. Novotny presented an analysis of five comparable properties. For each, he determined the percentage increase from the Assessor’s assigned value in tax year 2018 to the Assessor’s assigned value in tax year 2019. Mr. Novotny estimates the mean percentage increase of these five comparable properties to be 51%. Mr. Novotny argues that a 51% increase should be applied to the assigned value in tax year 2018 for the subject property as well, which was \$75,500, for an indicated actual value of \$114,005.

The Board was unable to give much consideration to Petitioners’ equalization evidence. Petitioners’ evidence of a disparity in percentage increases, by itself, is not probative of the actual value of the subject property, and under *Podoll* does not warrant assessment reduction. The Board gave minimal weight to Petitioners’ valuation analysis.

II. Market Approach

Petitioners contend that Colorado’s taxation process is flawed. Specifically, Petitioners contend during their opening and closing statements that assigned actual values for tax purposes should not take sale prices into consideration, particularly “in a state where the influx of people is occurring at a rate as high as ten thousand per month.” Petitioners contend that any

consideration of sale prices, which are increasing due to rising population and market demand, would be unfair and harmful in violation of section 24-4-103.3(1)(h) C.R.S. (2019).

This Board finds that the matter before us does not relate to or require rule review, and therefore section 24-4-103.3(1)(h), C.R.S. does not apply. The Board finds that the subject property is classified as residential; therefore, the Assessor must determine its actual value for tax purposes solely by the market approach. Under the market approach, the Assessor must consider sale prices of properties that are comparable to the subject property. The Board concludes that the Assessor's use of the market approach in determining the assigned value of the subject property was not in error.

III. Adjustments to Comparable Sales

Petitioners also argue that Respondents' appraisal report fails to account for varying ceiling heights, interior square footage, condition, and other factors.

Respondent's witness, Donna A. Gee, presented four comparable sales ranging in sales price from \$257,000 to \$347,490. After adjustments were made, the sales prices ranged from \$158,134 to \$199,528. Ms. Gee testified that after completing an interior inspection, she corrected the property records to reflect one bedroom versus the two bedrooms originally on the record. Ms. Gee applied an additional \$3,000 downward adjustment to the sales concluding to a reduction in value to \$178,000. Ms. Gee stated the value is well supported by the sales and all factors affecting the value were considered.

Respondent's second witness, Diane Marie Settle, testified that the adjustment calculations used in the Assessor's office are based on paired sales and regression analysis.

The Board finds that Respondent's selection of comparable sales and application of adjustments are accurate.

IV. Conclusion

After careful consideration of all the evidence, including testimony presented at the hearing, the Board finds sufficient probative evidence and testimony that the subject property was incorrectly valued for tax year 2019.

The Board finds Respondent's evidence and testimony to be the most credible. The Respondent completed a site-specific market analysis of the subject property comparing sales of similar properties and adjusting the sales for dissimilarities compared to the subject.

Petitioners did not present sufficient evidence or testimony to prove that the subject property should be valued below the recommended reduction in value of \$178,000.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$178,000. The Clear Creek County Assessor is directed to change his/her records accordingly.

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.

Section 39-8-108(2), C.R.S. (2019).

DATED and MAILED this 30th day of April, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

Debra A. Baumbach

Debra A. Baumbach

Concurring Board Member:

Gregg Near

Gregg Near

*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 decision of
the Board of Assessment Appeals.

Jacqueline Lim

Jacqueline Lim