

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JAMES A. & THERESA M. ROLLS,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 75604</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 3rd, 2020, Diane M. DeVries and Gregg Near presiding. James A. Rolls appeared on behalf of himself and Theresa M. Rolls. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibits 1-5, Respondent’s Exhibits A-B, and expert testimony by Petitioners’ witness Jonathan Klinowski, Colorado Certified Residential Appraiser, and Respondent’s witness Ms. Jessica Sampson, Colorado Certified Residential Appraiser.

DESCRIPTION OF THE SUBJECT PROPERTY

4949 S. Birch Street, Cherry Hills Village, Colorado 80121
Arapahoe County AIN Identification No.: 2075-07-3-01-002

The subject property is a residence in Cherry Hills Village. Its actual values—as assigned by the County Board of Equalization (CBOE) below, as requested by each party, and as determined by this Board—are:

CBOE's Assigned Value:	\$3,724,900
Respondent's Requested Value:	\$2,862,000
Petitioners' Requested Value:	\$2,536,000
Board's Determined Value:	\$2,862,000

Petitioners contest the 2019 valuation of the subject property as it represents a 50% increase over the value determined in the previous valuation by the Arapahoe County Assessor ("Assessor").

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of 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 the 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'S FINDINGS AND CONCLUSIONS

The Board finds that Petitioners' home is situated within a small subdivision in the Cherry Hills Village neighborhood and differs from much of the area by a covenant restricting residential construction to a level not to exceed sixteen feet. Because of the height limitation any improvement on the site is limited to a ranch style home. Further, Petitioners assert the Assessor erred in separately valuing a second guest house as equal to the main structure when this structure is inferior to the finish of the main home. Petitioners assert the appraisal submitted by the county does not adequately address the above factors and unreasonably relies upon 2-story homes as comparable to the subject property's ranch style design. Petitioners rely upon an appraisal report provided by a licensed appraiser in support of the appeal.

After review and careful consideration of the testimony and exhibits provided by both parties the Board finds Petitioners have provided insufficient probative evidence to persuade the Board of the viability of the complaint. In regard to the specific points of contention the Board finds the following.

Petitioners claimed their property was overvalued by 50% and obtained an appraisal report with a value opinion of \$2,536,000. In review of Petitioners' claim Respondent

reconsidered the assessed value and undertook a site-specific report, which concluded to an actual value of \$2,862,000 presented for this hearing.

The Board finds Petitioners' claim of value impairment caused by the sixteen-foot height limit was not a feature discernible in the local market. In addition, the Board was persuaded by testimony presented by Petitioners' witness that there was no influence of this factor and that he made no adjustment to the comparable sales relied upon within his report.

The Board questions the inclusion of Sale No. 1 in Petitioners' appraisal. This comparable sale is fifty-seven years older than the subject property and, despite a significant adjustment for condition, the Board is not swayed that such a vast difference in age, representing several decades of different construction techniques and buyer preferences, would be representative of the subject.

Respondent is recommending a value of \$2,862,000 which represents a reduction from the value applied by the Arapahoe County Board of Equalization.

ORDER

The petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$2,862,000. The Arapahoe County Assessor is directed to change their 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 13th day of April 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

Gregg Near

Concurring Board Member:

Diane M. DeVries

*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