

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No: 75789
Petitioner: LANCE WOOD, v. Respondent: GRAND COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER comes before the Board on Petitioner Lance Wood’s appeal of the 2019 tax year value assigned to his property by the Grand County Board of Equalization (“CBOE”).

PROCEDURAL BACKGROUND

The Board of Assessment Appeals (“Board”), Gregg Near and Diane M. DeVries presiding, held a merits hearing of this case on January 22, 2020. Petitioner appeared pro se. Respondent was represented by Christopher Leahy, Esq. On March 25, 2020, the Board issued a final agency order denying Petitioner’s appeal (“the Board’s Previous Final Agency Order”). Petitioner appealed the Board’s Previous Final Agency Order to the Colorado Court of Appeals, which reversed the Board’s Previous Final Agency Order and remanded the case to the Board for proceedings consistent with its opinion. Specifically, the Court of Appeals found the Board mistakenly treated the appeal as challenge to the Grand County Assessor’s valuation of the subject property, rather than the CBOE’s valuation, which was higher than the Assessor’s valuation.

FACTUAL RECORD

At the March 2020 merits hearing, the Board admitted into evidence Respondent’s Exhibit A, an appraisal report authored by William Wharton, an appraiser with the Grand Count Assessor’s Office. The Board heard the testimony of Mr. Wood and Mr. Wharton. An audio recording of this hearing was created. The Board has relied on this existing evidentiary record to reach the findings and conclusions presented in this Final Agency Order. As Board member Gregg Near has retired from the Board, Board member Monte Mullins joined Board member DeVries to consider the evidence in this proceeding on remand.

The property that is the subject of this appeal is a one-story home of modular construction located on a 0.14 acre lot. It is addressed 1055 Winter Park Drive, Winter Park, CO, and assigned County Schedule Number R303122. The CBOE assigned a value of \$452,000 to the subject property. This is the appealed value. Petitioner contends the value should be \$340,000. He reached this value by adding 3% to the 2017 subject property value.

APPLICABLE LAW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the county board'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).

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.*

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Company v. Arapahoe County 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., a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider an equalization argument as support for a value

determined using the market approach. *See id.*

FINDINGS AND CONCLUSIONS

The Board finds that Petitioner did not meet his burden of showing that the Grand County Board of Equalization incorrectly valued the subject property at \$452,000.

Petitioner's argument that the CBOE incorrectly valued the subject property centered on his disagreement with the percentage by which his property value increased for tax year 2019. However, a large increase in value does not itself prove anything about whether the subject was correctly valued. Petitioner also made this argument within the context of comparing the percentage by which the subject's value increased to the percentage by which nearby properties' assessed values increased. Petitioner pointed to the assessed value of other properties in the subject subdivision, and the percentage by which their value had increased from prior tax years, as evidence that the CBOE overvalued the subject. Specifically, Petitioner testified to the value the Grand County Assessor had placed on two properties – 19 Lindon Road, and 11 Balsam Drive. Petitioner argued that these properties were superior to the subject, yet had been assigned lower values. In addition, Petitioner pointed out that the County's appraisal report reported a 25.2% increase for residential properties in Winter Park Village, yet the value of his property increased by a larger amount, 37%.

The Board, and county assessors, must use comparable sales data to value residential property such as the subject. A market approach relies on the adjusted *sale* price of comparable properties, not the Assessor-assigned *assessed value* of a comparable properties. Neither of the two properties presented by Petitioner sold within the base period for tax year 2019. The property addressed 19 Lindon Road transferred as a vacant residential lot in July of 2018, and as of January 1, 2019 (the assessment date) the residence was still under construction and was only 60% complete. The property addressed 11 Balsam Drive has not transferred in a sale since May 2001. Therefore these properties were presented not as sales comparables, but as equalization comparables.

However, the assessed value of the equalization comparables presented by Petitioner did not provide any support for lowering the value of the subject property. Petitioner's argument that the County had valued or raised the subject's value more than similarly situated properties is an equalization argument. Equalization, the act of raising or lowering the total valuation placed on a class or subclass of property within a designated territorial limit, does not account for the specific attributes of individual properties and, thus, is not a proper valuation method for an individual property. The Board may only consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market approach, and if evidence is presented which shows the Board that the assigned values of the equalization comparables were correctly valued by application of the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997).

In this case, Petitioner did not establish the subject's value using a market approach, and did not present any evidence showing the Board that the equalization comparables were correctly valued using a market approach. In addition, the limited evidence presented indicates there were

significant differences between the subject and 19 Lindon Road as of the assessment date of January 1, 2019. The Board was not presented with adequate evidence to determine how the value of either equalization comparable was arrived at, or what adjustments would be needed within a market approach using them to value the subject property. As a result, the Board did not find the assessed value of the equalization comparables to be persuasive evidence that the CBOE had incorrectly valued the subject.

The Board must use the adjusted value of comparable sales to determine the market value of the subject. Respondent's appraiser's appraisal report indicated a 25.2% increase in residential values in Winter Park Village. The Board infers this percentage is an average, based on sales of residential properties in Winter Park Village. A site specific appraisal increase to the subject's value should not be based on an average percentage increase, but on the sales of comparable properties.

In addition to his equalization argument, Petitioner also argued that various factors should lower the value of the subject but had not been taken into consideration by the CBOE in their valuation. These included a claimed lot line encroachment by the subject residence's garage eaves onto an adjacent lot (a lot currently owned by Petitioner), the claimed existence of a flood zone on the subject property, and the claimed poor condition of the home. However, Petitioner provided no market data showing how these factors (evening assuming they exist, which was contested by the County) would impact the value of the home. In addition, Petitioner did not present persuasive evidence of the poor condition of the home.

In addition, the County's appraiser, Mr. Wharton, provided persuasive evidence in the form of a USPAP-compliant appraisal report in which he presented a detailed market approach, making adjustments where appropriate to sales of properties comparable to the subject. His appraisal report was supported by his expert testimony. He concluded to a \$455,000 value, which the Board found to be compelling evidence in support the CBOE-assigned value. Petitioner was not aware of any sales in his neighborhood which Mr. Wharton had not considered. The Board was convinced that Mr. Wharton carefully considered and each of the various factors Petitioner raised. Mr. Wharton's decision not to make an adjustment for a flood plain influence was supported by his research, which the Board found persuasive. The Board finds that Petitioner did not show that the CBOE-assigned value was incorrect due to the existence of factors Petitioner claimed the County had not considered.

In conclusion, the Board finds that Petitioner failed to meet his burden of showing that the CBOE-assigned value for the property was incorrect for the 2019 tax year.

ORDER

The petition is **DENIED**. The CBOE-assigned value of \$452,000 for tax year 2019 is affirmed.

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 23rd day of November, 2021.

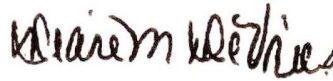
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Monte Mullins

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 order of the Board of Assessment Appeals.

Stephanie Cobos

Stephanie Cobos