

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 75796**

Petitioner:

**PAUL R. THOMAS,**

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF  
EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on March 4, 2020, Gregg Near and Sondra W. Mercier presiding. Petitioner appeared pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2019 actual value of the subject property.

**EXHIBITS AND WITNESSES**

The Board admitted Petitioner's Exhibits 1-3, as well as Respondent's Exhibits A-B. The Board designated as an expert Respondent's witness Mr. Nicholas W. Johnson, holding a Colorado Ad Valorem appraisal license.

**DESCRIPTION OF THE SUBJECT PROPERTY**

3433 South Jebel Court, Aurora, Colorado  
Arapahoe County Schedule No.: R34269088

The subject property is a residence in Arapahoe County. The subject property's actual values as assigned by the County Board of Equalization (CBOE) below and as requested by each party are:

CBOE's Assigned Value:	\$ 465,300
Respondent's Requested Value:	\$ 447,000
Petitioner's Requested Value:	\$ 242,970

## **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 (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 Board of Assessment Appeals, 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).

## **APPLICABLE LAW**

In valuing residential properties, Colorado's statutes and constitution require that the valuation of residential property be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(8)(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.

## **BOARD'S FINDINGS AND CONCLUSIONS**

Petitioner is requesting an actual value of \$242,970 for the subject property for tax year 2019. Respondent assigned a value of \$465,300 for the subject property for tax year 2019 but is recommending a reduction to \$447,000.

Petitioner contends that Respondent gave inadequate consideration to traffic noise from nearby Hampden Avenue in the valuation of his property. Additionally, Mr. Thomas reported that the open space adjacent to his property acts as a "unique and effective geographical directional sound horn channeling and enhancing the east/west traffic noise" past his residence. Ex. 1, preface p. 3. Petitioner supported his contention with traffic and noise studies. As a result, Mr. Thomas made a 37.7% downward adjustment to the 2017 actual value of \$390,000 based on a 37.7% increase in traffic.

Petitioner provided significant data to convince the Board that noise from traffic on Hampden Avenue should be considered in the valuation of the subject; however, Petitioner failed to show that the noise issue affects value to the degree that he estimates.

Respondent's witness, Nicholas W. Johnson, Residential Appraiser with the Arapahoe County Assessor's Office, presented a site-specific appraisal. In relevant part, Mr. Johnson provided three sales of properties that he believed suffered from high traffic noise due to proximity to Hampden Avenue. The appraiser placed the greatest weight (90%) on the three sales located near Hampden Avenue, concluding to a value of \$447,000. The Board finds that these three sales were similarly located near Hampden Avenue; that one of these sales was adjacent to the subject; and that all three suffered from high traffic noise due to proximity to Hampden Avenue.

Respondent provided sufficient probative evidence to support the value it requested for the subject.

After careful consideration of all of the evidence, including testimony presented at the hearing, and including evidence presented by Respondent in support of the reduced value of \$447,000, the Board finds that the subject property was incorrectly valued for tax year 2019.

### **ORDER**

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$447,000. 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.

**DATED and MAILED** this 3<sup>rd</sup> day of April 2020.

**BOARD OF ASSESSMENT APPEALS**

Drafting Board Member:



Sondra W. Mercier  
Sondra W. Mercier

Concurring Board Member:

Diane M. DeVries  
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  
Jacqueline Lim