

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

Petitioner:

JASON CROMER MATHERLY,

v.

Respondent:

ARAPAHOE COUNTY BOARD OF EQUALIZATION.

Docket No.: 76162

ORDER

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on May 27, 2020, Debra Baumbach and Sondra 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 EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A. The Board admitted Mr. Theodore Rinehart, Certified Residential Appraiser with Paragon Appraisal Services, and Kimberly Kunish, Certified Residential Appraiser with the Arapahoe County Assessor’s Office, as Expert Witnesses.

DESCRIPTION OF THE SUBJECT PROPERTY

**10 Random Road, Englewood, Colorado
Arapahoe County Schedule No. 2077-12-1-03-004**

The subject is improved with a 5,500+ square foot, 4-bedroom/3.5-bath, ranch style single family home constructed in 1960. The residence is situated on a 3.0-acre site that is designated Flood Zone AE, identified as a High Risk Special Flood Hazard Area. (Petitioner’s Exhibit 1, pg. 16).

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

CBOE's Assigned Value:	\$2,792,400
Respondent's Recommended Value:	\$2,065,500
Petitioner's Requested Value:	\$1,340,000

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 (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 Commission*, 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 BAA, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (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.*

APPLICABLE LAW AND AUTHORITATIVE SOURCES

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. 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.

FINDINGS AND CONCLUSIONS

After consideration of the testimony and exhibits presented, the Board considers the following:

I. Flood Hazard

While the parties differ on the severity of the impact of the flood hazard designation, both concur that a large portion of the site and some portion of the residential improvement is affected.

Petitioner's witness, appraiser Theodore Rinehart, testified that the residential structure was situated in the flood plain. Respondent's witness, appraiser Kimberly Kunish, estimated that 10% of the structure was within the flood plain. Neither party provided a precise elevation certificate or improvement survey as evidence; however, the Board was convinced that if any portion of the residential structure was within the actual flood plain, the entire structure would reasonably be considered impacted.

Testimony of Petitioner and Mr. Rinehart indicated that in addition to the potential for structural damage due to flooding, the subject's location within a flood hazard area caused the subject to be difficult to impossible to finance. Additionally, any future renovations or redevelopment would require consideration of the flood plain and likely add cost to construction. Other impacts noted by Mr. Rinehart included the inability to build below grade (which specifically affects the ability to construct a basement and pool at the subject property) along with limitations on site improvements typical to the area, such as outbuildings and some items of landscaping. Mr. Rinehart testified that market participants he interviewed estimated a loss in value at a rate of \$250,000 per acre as the impact on flood-zoned properties.

II. Analysis Based on the Market Approach

Both parties completed site-specific appraisals for the subject, and both correctly placed reliance on the market approach to estimate value.

Mr. Rinehart presented seven sales that he selected based on the properties having sold within the 18-month base period, from January 1, 2017 through June 30, 2018. He concluded that the subject residence was dated, had a dysfunctional floor plan, and suffered from deferred maintenance. He assigned the subject a condition rating of fair/average, and selected sales that he believed were dated homes in similar condition. Prior to adjustment, the sales indicated a price range of \$1,660,000 to \$2,682,500. (Petitioner's Exhibit 1, pgs. 4-6).

Along with typical adjustments for differences in characteristics, Mr. Rinehart made a downward adjustment of \$750,000 (or \$250,000 per acre of the subject site) to each of the sales to reflect the diminishment in value to the subject due to its flood hazard designation. After adjustment, Mr. Rinehart's sales indicated a value range of \$883,100 to \$1,435,300. Giving the greatest weight to Sales 1 through 5, Mr. Rinehart concluded to a value of \$1,340,000 for the subject property.

Mr. Rinehart contended that non-flood impacted land in the subject neighborhood had been selling for \$550,000 to \$850,000 per acre. While use of the cost approach is generally not permitted in the valuation of residential properties for tax purposes, the Board notes that in his analysis Mr. Rinehart placed a value of \$600,000 per acre on the subject site before making an adjustment for the impact of flood zone designation. (Petitioner's Exhibit 1, pg. 4). Ms. Kunish applied an adjustment of \$650,000 per acre to her sales for differences in site size. Yet, Mr. Rinehart adjusted his comparable sales for differences in site size at a rate of only \$325,000 per acre, citing issues with the flood plain.

The Board finds the amount of Mr. Rinehart's sales adjustment of \$325,000 per acre for difference in site size a duplication of the adjustment for flood plain and generally lacking support

based on his own testimony and exhibit. Recasting Mr. Rinehart’s sales at a higher per acre price adjustment of \$600,000 would indicate a range of \$877,100 to \$1,595,200.

Board Recast:	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7
Sales Price		\$1,660,000	\$1,798,000	\$1,700,000	\$1,750,000	\$1,710,000	\$ 2,682,500	\$ 2,550,000
Site Size (Acres)	3.0	2.5 \$ 300,000	2.38 \$ 372,000	2.05 \$ 570,000	2.13 \$ 522,000	3.01 \$ (6,000)	2.29 \$ 426,000	2.9 \$ 60,000
Site Adjustment @	\$ 600,000							
All Other Adjustments		\$ (467,000)	\$ (662,800)	\$ (674,800)	\$ (687,300)	\$ (826,900)	\$ (1,630,000)	\$ (1,114,700)
		\$1,493,000	\$1,507,200	\$1,595,200	\$1,584,700	\$ 877,100	\$ 1,478,500	\$ 1,495,300
Net \$ Adj		\$ (167,000)	\$ (290,800)	\$ (104,800)	\$ (165,300)	\$ (832,900)	\$ (1,204,000)	\$ (1,054,700)
Net % Adj		-10%	-16%	-6%	-9%	-49%	-45%	-41%

The Board finds Petitioner’s Sales 1 through 4 most relevant, due to the net percentage adjustments ranging from 6% to 16%, compared to the larger net adjustments of between 41 and 49% Mr. Rinehart made to Sales 5, 6 and 7. The Board finds the more relevant supported range in value to be \$1,493,000 to \$1,595,200.

Ms. Kunish presented four comparable sales that occurred within the extended base period, from June 2015 to April 2016. Three of the sales involved sites that were impacted by flood hazard; however, only Sale 1 appeared to include residential structural improvements within the flood zone. A fourth sale was included to test the relevance of flood plain to value. Prior to adjustment, the sales indicated a price range of \$1,600,000 to \$2,300,000. (Respondent’s Exhibit A, pg. 38). After adjustment, Respondent’s sales indicated a value range of \$2,065,300 to \$2,065,900. Ms. Kunish concluded to a value for the subject of \$2,065,500.

Respondent’s Sale 1 was an October 2015 sale of a neighboring property for \$1,600,000. Like the subject, residential structural improvements for Sale 1 were within the flood zone. Initially, this sale would look to be highly relevant. Mr. Rinehart testified that he had interviewed the buyer in this transaction, and that at the time of sale, the buyer was not aware of all the potential impacts of the flood zoning. Reportedly, the buyers only realized the extent of the issue when they sought financing and attempted to redevelop/renovate the residence. Based on testimony, the Board concludes it is possible that Sale 1 was not purchased by a knowledgeable buyer.

The Board finds Respondent’s remaining sales (Sales 2, 3 and 4) somewhat relevant for age and location. However, the Board finds that Respondent gave inadequate consideration to the impacts of the subject’s location within a flood zone, which would likely result in structural, financing and redevelopment limitations. The Board finds that Respondent’s sales provide limited probative evidence as to the value of the subject.

III. Estimate of Value

The Board finds that Petitioner presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019.

In this matter, the Board exercises its discretion and applies its specialized judgment to determine the appropriate weight to place upon what it considers Petitioner’s relevant comparable sales. *See Creekside at DTC, Ltd. v. Board of Assessment Appeals*, 811 P.2d 435, 437 (Colo. App. 1991). The Board finds Petitioner’s Sales 1, 2, 3 and 4 provide evidence of value. After Board adjustment for site size, these sales indicated a rounded value range of \$1,500,000 to \$1,600,000.

The Board was convinced that the subject's location within the flood hazard area was significant to value. Not only does the subject suffer from the risk of physical damage to the residential structure, the potential for financing is limited and additional costs and limitations would likely be incurred with any future renovation or redevelopment.

The best evidence in this case would include base period sales of residential units that included at least a portion of the structure situated within a flood plain area. However, the Board was convinced that potential comparable sales were severely limited.

The Board finds Respondent's Sale 1, a comparable sale which sold for \$1,600,000, provided the closest comparison to the subject property, as it represented the sale of an adjacent property where the residential improvement was fully situated within flood area. Although it is possible that the buyer did not have all relevant information as to the impact of the flood plain, the Board finds this sale offers some support for the indication of value.

The Board also found Mr. Rinehart's testimony regarding the issues related to the flood plain and the market support for his \$750,000 adjustment for the floodplain feature compelling. The Board was persuaded that Mr. Rinehart calculated this adjustment based on his knowledge of the market and the subject property.

Lastly, the Board notes that a value of \$1,600,000 falls at the upper end of Petitioner's Board-adjusted range, but at the lower end of the range of both party's unadjusted comparable sales prices.

Therefore, weighing all the evidence presented, the Board finds that a value of \$1,600,000 was reasonably supported.

ORDER:

Respondent is ordered to reduce the 2019 actual value of the subject property to \$1,600,000.

The Arapahoe 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 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 9th day of September, 2020.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Sondra Mercier

Concurring Board Member:



Debra Baumbach

*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.



Casie Stokes