

| | |
|---|---------------------------------|
| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MILLER DREW & ANNABETH REVOCABLE LIVING TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>COSTILLA COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 76616</p> |
| <p>FINAL AGENCY ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 3, 2021, Diane DeVries and Sondra Mercier presiding. Drew Miller appeared on behalf of Petitioner. Respondent was represented by Edwin J. Lobato, 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. The Board also admitted Respondent’s Exhibit A into evidence. Mr. Michael W. Akana, Ad Valorem Appraiser with the Teller County Assessor’s Office, was admitted as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

**2273 Port Loop, Fort Garland, Colorado
Forbes Park Unit J-1 Block 125 Lot 2273,
Costilla County Schedule No. R009086**

The subject is a 992-square foot, 1 ½ story log constructed home situated on a 1.442-acre site. The residence has one bedroom, one bath, and was constructed in 2006. (Exhibit A, pgs. 4-5.) Petitioner owns five adjacent lots with approximately 7 ½ acres that are not part of this appeal. As of the date of value, January 1, 2019, there were no utilities to the site except a copper phone line. Water was hauled to the property from a centralized well system and a propane generator was used. Access to the residence is via a gravel road, 6 miles from the gate into Forbes Park. Access is year-round with notification given to Forbes Park if snow removal is required.

The Forbes Park area experienced a severe fire that started June 27, 2018. Properties in the south end of the park were not burned; however, several homes and lots were burned throughout the north to middle area of the Park. (Exhibit A, pg. 5.)

The subject property's actual values, as assigned by the County Board of Equalization ("CBOE") below and as recommended and requested by each party, are:

| | |
|---------------------------------|-----------|
| CBOE's Assigned Value: | \$153,003 |
| Respondent's Recommended Value: | \$153,003 |
| Petitioner's Requested Value: | \$75,000 |

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. *Gyurman 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

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.

FINDINGS AND CONCLUSIONS

Petitioner, Drew Miller, contends that his property value declined due to the June 2018 fire; and that the subject's value should be reduced by 50%. Petitioner indicated that there was no

damage to the house from the spring fire; however, he testified, trees on the lot sustained damage in the fire and the view changed to burned-out forest as a result of damage to adjacent parcels. Petitioner reported that they had lost half their trees and that their property became an “oasis lot” surrounded by destroyed forest.

Mr. Miller discussed lot sales that occurred post-fire/post-base period, including his purchase of an adjacent lot for \$3,000. He further testified that he had received marketing letters offering \$1,000 per lot post fire. Petitioner submitted two letters showing offering prices of \$1,900 and \$2,108 per lot; however, these do not appear to be for the actual subject site, which is improved. (Exhibit 1, pgs. 6-7.) No sales of residential improved properties were provided by Petitioner.

The Board was not swayed by Petitioner’s lot analysis, as the Board cannot consider a comparison of component parts of total value. “At each level of appeal, a party may seek review of only the total valuation for assessment and not the component parts of that total.” *See e.g. City & Cty. of Denver v. Bd. of Assessment Appeals of State of Colo.*, 848 P.2d 355 (Colo. 1993).

Ronda Lobato, Deputy Assessor with Costilla County, testified that following the fire adjustments to values county-wide were generally made based on individual lot damage, not on surrounding lot damage. The county relied on an aerial photography system to assess damage to individual parcels. Percentage adjustments were based on a system developed in La Plata County, as approved by the Department of Property Taxation.

Respondent’s witness, Mr. Michael Akana, Ad Valorem Appraiser, testified that there were two ways to measure the market impact of a fire: 1) actual effect of the fire on the subject (i.e. tree loss or building loss); and 2) market impact of the fire, based on sales.

1. Actual effects of the fire on the subject

Petitioner contended that a high percentage of the trees on the subject lot were destroyed in the fire. However, Mr. Miller’s proof of the damage was limited to photographs, some of which appear to include areas beyond the boundary of the subject. Respondent’s witnesses reported that the Assessor’s Office was unable to assess any obvious damage to the subject as there were no property lines identified at the time of inspection. Ms. Lobato reported that historical and post fire aerial photographs were relied on to determine the extent of damage to properties located in the area of the fire. (*See Exhibit B.*) Based on this analysis, Respondent determined there was no obvious fire damage to the subject. Petitioner provided insufficient evidence for the Board to determine what, if any, damage had occurred on the subject.

2. Market impact based on sales

Petitioner provided no relevant residential sales data to support a negative market adjustment for the fire. Determination of any market impacts from the fire was improbable simply due to the date of the fire relative to the end of the base period. Colorado Statute prohibits looking at sales beyond the base period to establish valuation, which in this case was just days after the

start of the fire. The delayed nature of Colorado's property tax structure means that many economic impacts do not result in value changes until the following biennial valuation period.

3. Conclusion

Mr. Akana correctly completed a site-specific appraisal of the subject property, comparing sales of similar improved residential properties and adjusting for time and a variety of characteristics. The concluded value was well supported by the adjusted sales, which indicated a value range of \$145,990 to \$165,480. (Exhibit A, pg. 13.) The Board finds the appraisal to be persuasive and sufficient to overcome Petitioner's assertions of error.

Based on the findings and conclusions presented, the Board finds that Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019.

ORDER

The petition is **DENIED**.

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 15th day of June, 2021.

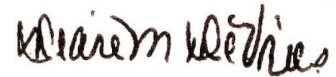
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Sondra W. Mercier

Concurring Board Member:



Diane 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.



Casie Stokes