

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76641
Petitioners: MERLE GAST and BEVERLY SHICK, v. Respondent: ELBERT COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 10th, 2020, Gregg Near and Diane M. DeVries presiding. Beverly Shick appeared on behalf of herself and Merle Gast. Respondent was represented by Bart Greer, Esq. Petitioners protest the valuation of the subject property for tax year 2019.

EXHIBITS AND WITNESSES

The Board admitted Petitioners’ Exhibit 1, Respondent’s Exhibit A, and expert testimony by Respondent’s witness Zachary Trester, Deputy Ad Valorem Appraiser employed by the Elbert County Assessor (“Assessor”).

DESCRIPTION OF THE SUBJECT PROPERTY

4122 Downwest Ride, Elizabeth, Colorado 80107
Elbert County Account No.: R107789

The subject property is a 1,734-square-foot single-family ranch-style home on 2.59 acres of land, and it is classified as residential property. The dwelling is a 3-bedroom, 3-bathroom house built in 1993. The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended by the parties, are:

CBOE’s Assigned Value:	\$590,000
Respondent’s Recommended Value:	\$575,000
Petitioners’ Recommended Value:	\$509,000

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, 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 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 reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the 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.* However, the Board may not impose a valuation on the property in excess of that set by the Board of Equalization. § 39-8-108(5)(a), C.R.S. (2019).

APPLICABLE LAW

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. (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.

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. (1994), 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 the value determined using the market approach. *See id.*

THE BOARD'S FINDINGS AND CONCLUSIONS

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:

The Board finds Petitioners' approach to valuation to be unsupportable.

Petitioners researched the assessed values applied to the properties within the subject subdivision and determined a value based upon the average increase applied for the current value cycle from the previous base period. Petitioners argued the subject property should have been treated equally to the other homes in the area.

Petitioners provided no comparable sales from the base period in support of their argument.

Petitioners disputed the comparable sales provided by Respondent's witness as being insufficiently similar to the subject and inappropriately adjusted.

Respondent's witness Mr. Zach Trester provided an Appraisal Report in support of the value determined by the CBOE.

The following items were considered in support of Respondent's value opinion: The appraisal appropriately considered comparable sales within the subject's market area. The comparable sales were adjusted for significant differences in property features. The witness applied adjustment amounts determined through mass valuation. The comparable sales were located within the delineated market area determined by the Assessor. The comparable sales were considered and adjusted for time (market conditions) as required to represent the subject value as of the appraisal date.

Petitioners argued that the subject was not valued equally to other similar properties. For an equalization argument to be effective, Petitioners must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach.

As that evidence and testimony was not presented, the Board gave limited consideration to the equalization argument presented by Petitioners.

The Board does find the market value to potentially be influenced by Petitioners' claim of significant wear to the subject's wood deck. Although an inspection and construction bid by a licensed contractor offered to the Assessor could result in an adjustment to the value estimate, no such bid was presented. The reported damage was not considered in Respondent's appraisal as that deficiency could not have been determined without the taxpayer's allowing the appraiser access on the property. Such access would provide more complete information than sole reliance upon an exterior inspection.

Sufficient probative evidence and testimony was presented to prove that the subject property should be set at Respondent's recommended value.

ORDER

The Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$575,000.

The Elbert 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.

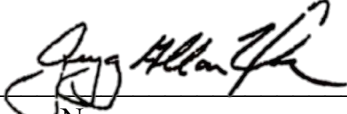
Section 39-8-108(2), C.R.S. (2019).

DATED and MAILED this 20th day of April, 2020.

BOARD OF ASSESSMENT APPEALS:

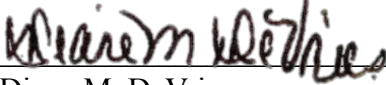


Drafting Board Member:



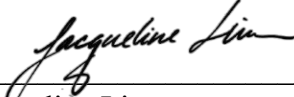
Gregg Near

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