

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76657
Petitioners: JEFFRY STRAUSS and SUSAN STRAUSS, v. Respondent: ARAPAHOE COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Colorado Board of Assessment Appeals (“Board”) on May 6, 2020, Valerie C. Bartell and Diane M. DeVries presiding. Petitioner Susan Strauss represented both herself and Petitioner Jeffry Strauss. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted Petitioners’ Exhibits 1 through 3, Respondent’s Exhibits A and B, and expert testimony by Respondent’s witnesses Jessica Sampson, Certified Residential Employer employed by the Arapahoe County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

10 Windover Road, Greenwood Village, Colorado 80121
Arapahoe County Schedule No.: 034527761

The subject property is a custom-built home in 2005, with a total finished square footage in excess of 10,000 square feet. The subject property’s actual values—as assigned by the County Board of Equalization (“CBOE”) below, as recommended and requested by the parties, and as determined by this Board—are:

CBOE’s Assigned Value:	\$2,966,000
Respondent’s Recommended Value:	\$2,880,000
Petitioners’ Requested Value:	\$2,563,000
Board’s Determined Value:	\$2,850,000

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. Colo. 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, 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 this Board for a new and separate determination. *Id.*

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.

FINDINGS AND CONCLUSIONS

Petitioner (Ms. Strauss) presented three sales she believed were most comparable to the subject property. The comparable sales were located within the neighborhood boundaries of the subject property. Petitioner testified that she had made a personal interior inspection of two of the comparable sales during open houses. The sale prices of the comparable sale properties had an unadjusted range between \$2,600,000 and \$2,800,000. Ms. Strauss, who acknowledged she is not an appraiser, but had taken a class on farm appraisal many years ago, consulted with the

Arapahoe County Assessor's office for guidance on adjustments based on the county's regression analysis model. Ms. Strauss stated that in addition to guidance on the amount of adjustments being provided, the assessor also provided relevant elements of comparison, which were utilized in Ms. Strauss' valuation model. While the model provided by Ms. Strauss was not an appraisal, and certain appraisal principles such as bracketing of land size were not applied, the model did provide a reasonable basis for Ms. Strauss' argument. Ms. Strauss' mean adjusted value was \$2,407,000, and the median was \$2,554,211.73. Net adjustments ranged between 1 and 22 percent, after considering the time-adjusted sale price of the comparable sales.

Respondent called Jessica Sampson, an appraiser with the Arapahoe County Assessor's office, to provide testimony to the appraisal Ms. Sampson drafted on the subject property. Ms. Sampson utilized all three of Petitioners' comparable sales, plus two more from expanded search criteria to bracket the larger subject parcel. Ms. Sampson was unable to perform an interior inspection of the subject as of the effective date of the report, but did recall making an interior inspection of the subject years ago, and recalled relevant features of the subject. Ms. Sampson's appraisal was well-reasoned and all adjustments addressed in the appraisal were rational. Ms. Sampson put the most weight on Sale 1, which had an adjusted price of \$2,876,570; however, all her adjusted values were within a 1.81 percent range. Her concluded value was \$2,880,000 and this is the value requested by Respondent.

In the comparison of the two valuations provided, one by Petitioner and one by Respondent, while Petitioners' valuation was not misleading, Respondent's valuation was more credible because Respondent used bracketing for the relevant elements of comparison. However, there was one deficiency in Respondent's report relating to the adjustment of a swimming pool.

Included in the elements of comparison provided to Petitioner by the Arapahoe County Assessor's office was an adjustment for a swimming pool. The adjustment used was \$50,000. Petitioner used this adjustment in her exhibit presented to the Board. Petitioner did not recall if her Comparable Sale 2 had a swimming pool. However, based on the MLS photos in Respondent's Exhibit A, the Board finds that Petitioners' Comparable Sale 2 did indeed have a swimming pool. Respondent's witness stated that in her judgement, the comparable sales did not warrant an adjustment for amenities such as a pool, as these "come out in the wash." There was no discussion or analysis of whether an adjustment for a pool was warranted in Respondent's Exhibit A. While it is understandable that these amenities may in some cases have little to no measurable impact on actual value given the highly custom level of the comparable sales, the Board finds that the assessor's office has sufficient mass data to provide a reasonable basis for the adjustment of the pool, namely, in the mass data that the assessor's office provided to Petitioner. It stands to reason that a pool should have at least been considered in the appraisal report.

There are no other items of dispute within Respondent's appraisal, other than the adjustment for a pool. Had the pool been considered in Respondent's appraisal, the adjustment grid and final concluded value may have looked similar to the following:

Comparable Sale Property	Adjusted Value (Ex A, p. 28)	Pool (\$50,000)	Potential Adjusted Value	Comp % Weight
5485 Pemberton Drive	\$2,876,570	Yes	\$2,826,570	37%
5503 South Franklin Lane	\$2,882,720	No	\$2,882,720	16%
955 East Westglow Lane	\$2,911,450	Yes	\$2,861,450	18%
2805 East Long Court	\$2,859,770	Yes	\$2,809,770	13%
2501 East Willamette Lane	\$2,899,540	No	\$2,899,540	16%
Final Concluded Value of the Subject Property: \$2,851,324				

Therefore, the Board finds that the concluded value is \$2,850,000 (rounded).

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$2,850,000. The Arapahoe County Assessor's Office is directed to change its 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, then 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 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, then 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 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 14th day of May, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

Valerie C. Bartell

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