

| | |
|---|--------------------------|
| BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 | Docket No.: 78623 |
| Petitioner: NICHOLAS C. ROMAN and KENNETH C. DUNCAN, v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION. | |
| FINAL AGENCY ORDER | |

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 4, 2020, Sondra Mercier and Valerie Bartell presiding. Petitioner Nicholas C. Roman appeared pro se. Respondent was represented by Meredith P. Van Horn, attorney for the Adams County Board of Equalization. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1, which was attached to the petition, and Respondent’s Exhibit A and rebuttal Exhibit B.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 3653 West 89th Way, Westminster, CO
County Schedule No.: 0171919401040

The subject property is a duplex residential property. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

| | |
|-------------------------------|------------|
| CBOE’s Assigned Value: | \$ 486,000 |
| Petitioner’s Requested Value: | \$ 362,720 |
| Board’s Concluded Value: | \$ 478,000 |

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 or classification 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 county board of equalization (CBOE) proceeding may be presented to this 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 CBOE. § 39-8-108(5)(a), C.R.S.

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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

FINDINGS AND CONCLUSIONS

The subject property is a duplex residential property located in the City of Westminster, Colorado. Petitioner testified that he utilized his knowledge of the market as a broker, along with consultation with a fellow appraiser to adjust the comparable sales the CBOE used below to arrive at a revised supported market value for the subject.

Petitioner provided a spreadsheet of eight comparable sales, listing their address, sale date, sale price, the County-assigned value, and the difference between the sale price and the County-assigned value. Petitioner's list of sales included two sales used by the County at the CBOE level to support the subject's value, which Petitioner contended required adjustments to sale price not made by the County. These sales were the last two listed properties (3585 W. 88th Ave and 3673 W. 89th Way). His showed his adjustments to their sale prices on a separate grid. He adjusted the sale price for 3585 W. 88th Ave for bathrooms and basement square footage. He applied a \$50,000 downward adjustment to the sale price for 3673 W. 89th Way, due to its renovation. He testified the County's reliance on this comparable was a "main difference" between his asserted value and the County's value. Petitioner testified that he interviewed an appraiser knowledgeable in the field of residential appraisal, and drew upon his experience as a real estate broker and investor in arriving at his adjustment figures.

Petitioner also listed the actual, unadjusted sale prices of six comparable sales he stated were not considered by the County but which supported his testified value of \$362,720. He provided no explanation as to whether he considered whether any adjustments to the sale prices of the six sales were required for dissimilarities with the subject. It did not appear that market time adjustments were factored into Petitioner's summary.

He testified he placed the most reliance on the unadjusted sales prices of 8826 Lowell Blvd and 9011 Hoffman Way, and his adjusted sale price for 3585 W. 88th Ave.

Respondent presented the expert testimony of Sarah Morehead, an employee of the Adams County Assessor's Office. Ms. Morehead's testimony was supported by an appraisal of the subject property dated 10/2/2020, admitted as Exhibit A. Ms. Morehead utilized four comparable sales, including three included in Petitioner's comparable list: 8856 Lowell Blvd, 3585 W. 88th Ave., and 3673 W. 89th Way. Ms. Morehead selected 3673 W. 89th Way (the sale of the property Petitioner stated was renovated) as her Comparable #1. Ms. Morehead arrived at an adjusted sale price of \$483,918.50, after applying a downward adjustment of \$30,800 for a lower effective age to account for the remodeling of the residence. Ms. Morehead selected 3585 W. 88th Avenue as her Comparable #2 (the sale of one of the three properties Petitioner stated were most comparable to the subject, which he adjusted for bathroom and basement differences), and arrived at an adjusted sale price of \$476,059.20. Ms. Morehead placed the most weight on these two sales in arriving at her conclusion of value of 478,000.

After carefully weighing the evidence, the Board concludes the analysis provided by Petitioner did not demonstrate Petitioner's recommended adjustments were supported by market data. Specifically, Petitioner's analysis did not factor in other relevant elements such as market timing, or site or unit size. The Board was unable to place any weight on the unadjusted sales data

provided by Petitioner, as no information was provided to allow the Board to assess possible dissimilarities of the sales with the subject, as required by statute and in a proper market approach to valuation. The Board was persuaded that Ms. Morehead selected comparable sales, and applied appropriate adjustments calculated using market data. The Board found Ms. Morehead's adjusted sales prices for 3673 W. 89th Way and 3585 W. 88th Avenue more supported than those advanced by Petitioner. In addition, Ms. Morehead provided analysis of Petitioner's comparable sales, supported by the documentation in Exhibit B, which further persuaded the Board that Petitioner's requested value for the subject of \$362,720 is lacking in market support.

The Board finds that Petitioner did not provide sufficient evidence to demonstrate the value assigned by the Adams County Board of Equalization of \$486,000 is incorrect. The Board concludes that Petitioner has not met his burden of proving the assigned value for tax year 2019 is incorrect. However, the Board finds that Respondent provided evidence sufficient to support its recommendation for a reduction in value to \$478,000.

ORDER

The petition is **GRANTED**, based on the Board's adoption of the Respondent's recommended reduction in value to \$478,000. The Adams County Assessor is ordered to update 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, 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 25th day of March, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

Valerie Bartell

Valerie C. Bartell

Concurring Board Member:

Sondra W. Mercier

Sondra Mercier

*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.

Yesenia Araujo
Yesenia Araujo