

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78885
Petitioner: OFER SHAUL, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 4, 2020. Diane DeVries and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Olivia Lucas Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-6 and Rebuttal Exhibits 7-8 and Respondent’s Exhibit A and Rebuttal Exhibit B.

DESCRIPTION OF THE SUBJECT PROPERTY

415 Drake Street, Boulder
County Schedule No.: R0001292

The subject property is improved with a single-family residence. The residence is a single-family structure constructed in 1967. The structure is classified as very good quality, the condition is average. The residence has 2,369 square feet of finished living area above grade and 508 finished square foot in a walkout basement. There are four bedrooms and one bathroom and three ¾ bathrooms. There is a 653 square foot detached garage. 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:	\$ 1,335,700
Respondent's Recommended Value:	\$ 1,335,700
Petitioner's Requested Value:	\$ 1,000,000

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 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.

ISSUES

The Petitioner's appeal of the Respondent's value as reflected in the exhibits and testimony presented included the following most salient issues:

1. The subject property is a uniquely designed home by noted architect Charles Haertling. Petitioner argued that uniquely designed homes like the subject have aesthetic and historical appeal but do not appreciate like other homes in this market due to the uniqueness of the floorplan. Petitioner testified that in his opinion the market regards Haertling homes as suffering from “more “form than function,” despite the noted architect’s reputation.
2. Petitioner believes that because of the Haertling-designed historical nature of the home there are highly restrictive regulations by the city of Boulder that prevent demolishing the home or changing the exterior design of the home. Because of this, the market for the home is similarly restricted, as other homes on the market do not have such restrictive historical preservation regulations.
3. Petitioner introduced evidence of valuations in years previous to tax year 2019, and the value placed on the property for tax year 2020 by the Boulder County Assessor.
4. Petitioner acknowledged that he purchased the subject property in January 2015 for \$1,150,000 and that since the purchase he converted the built-in single car garage into a bedroom and added a two-car garage to the property. The improvements were installed and completed prior to the assessment date of January 1, 2020. Petitioner testified that the total cost of the improvements were \$200,000. Petitioner believes that although he was able to purchase the subject property for approximately \$250,000 below list price, he still overpaid for property. He believes that he could not sell it for as much as he purchased it, even with the additional improvements that were added. Petitioner further stated that he was under a severe time constraint while engaging in the purchasing process and that the purchase did not satisfy several of the criteria that define the market value. (See page 18, Respondent’s Exhibit A, *Definition of Value*.)
5. Petitioner disputes the characterization of the quality of construction of the subject as “very good,” given its actual age of 51 years and effective age of 23 years. Petitioner believes that Respondent’s comparable selection is flawed based on this. Petitioner provided 15 sales of properties that Petitioner believed were more appropriate in establishing the value of the subject. After applying the County-derived time adjustments to the 15 comparable sales, the average sale prices of the time adjusted sales was \$911,313, which Petitioner states is 40% less than the value determined by the CBOE. Petitioner did not adjust the comparables for any differences with the subject (e.g. square footage, location, basement, garage, etc.). Petitioner also introduced an equalization argument that the actual value established by the County for the comparable sales also prove that the value of the subject is overvalued.
6. Petitioner added two other properties in Rebuttal Exhibit 7, stating an equalization argument that these two properties are similar to the subject but have actual values unfairly lower than the subject.
7. Petitioner believes that the three comparables sales selected by and adjusted by the Respondent do not accurately support the value of the subject. Respondent identified a

sale proximate to the subject at 2370 Kenwood Dr., which sold in August, 2017 for \$1,714,400. This sale is on a 15,690 square foot site. The improvements are 5,758 square feet. Petitioner challenges that another sale, next door to this comparable, at 2390 Kenwood Dr., should have been selected and analyzed. This property sold for \$874,800, has a lot size of 15,944 and 3,430 square foot improvements. (The subject property is on a 12,676 square foot lot and has improvements totaling 3,885 square feet.) Petitioner believes that the sale selected by the Respondent at 2370 Kenwood Dr., that is 2,000 square foot larger than the subject, would need a negative \$1,000,000 size of improvements adjustment (\$500 per square foot). Petitioner also disputes the selection by the Respondent of the sale at 1900 King Street. Petitioner believes this sale is inappropriate for valuation of the subject for two primary reasons. Petitioner disputes Respondent's statement that this sale is 1.9 miles from the subject. Petitioner used Google Maps to determine that his sale at 2390 Kenwood Dr. is actually further away from subject when measured by distance by road and car.

Petitioner called as a witness Jeffrey A. Erickson, a real estate broker. Mr. Erickson was the listing broker of the subject property when it was purchased by the Petitioner in 2016. Mr. Erickson testified that the unusual floor plan of the subject makes it a difficult property to sell. Mr. Erickson stated that he believes that an adjustment of \$1,000,000 to the sale of 2370 Kenwood Dr., to account for the difference in 2,000 square feet, is appropriate given the cost of construction in the local market. Mr. Erickson offered that he agreed that \$1,000,000 was an appropriate value for the subject property.

Respondent called as witness David Arthur Martinez. Mr. Martinez is a licensed appraiser in the state of Colorado. He holds an Ad Valorem license. Mr. Martinez is employed by the Boulder County Assessor's office. Mr. Martinez presented an Appraisal Report of the subject property, admitted as Exhibit A. In accordance with statute, the appraiser considered only the sales comparison approach for this residential classed property. The appraiser identified three comparable sales for analysis. All three sales sold prior to the appraisal date. All three sales were adjusted for change in market conditions (time trended) per § 39-1-104(10.2)(a), C.R.S. The appraiser identified the following units of comparison from a list of 21 possible factors (including time adjustment): land size, quality adjustment, effective year of construction, above grade area, unfinished basement, finished basement, garage, carport, and bath counts. One of the three comparables identified for analysis was the subject property (specifically, its sale to Petitioner in January 2015). After the market condition adjustment of \$302,910, the subject was adjusted for the following factors occurring subsequent to the purchase of the property: the loss of a built in garage that was finished that was into a bedroom and $\frac{3}{4}$ bath (-\$25,900), the addition of a detached 653 square foot detached garage (+\$32,650), additional finished square footage of 518 square feet (+\$46,620), and the addition of a $\frac{3}{4}$ bath (+\$7,000). The concluded 2019 adjusted value of the subject, based on the subject sale, was \$1,513,280. Petitioner also identified two other sales at 2370 Kenwood Dr. and 1900 King Ave. The average sale price of these two comparables was \$1,732,000, the average of the values adjusted for time was \$1,769,604, and the concluded values after adjustment average \$1,766,308. In placing most weight on comparable sale two, the subject property, the Respondent concluded to a reconciled value of \$1,513,000. (Exhibit A, page 23.)

Respondent introduced Rebuttal Exhibit B, authored by the Respondent's expert. Page 1 of Rebuttal Exhibit B is list of properties in the city of Boulder that are Charles Haertling-designed homes. Six of the properties sold during the data collection period. The Respondent also inappropriately identified properties sold subsequent to the data collection period.

FINDINGS AND CONCLUSIONS

The Board finds the Respondent's analysis and supporting data to be more convincing in establishing the value of the subject than the evidence presented by Petitioner. The Petitioner stated that the subject property was burdened by the fact that it was designed by architect Charles Haertling because the design of the interior is functionally obsolete. Petitioner offered no evidence to support this contention. The Board concludes that the evidence surrounding the purchase of the subject property in 2015 satisfied the criteria of the definition of market value established by the International Association of Assessing Officers and presented in the Respondent's appraisal report on page 18. The Board concludes that the past sale of the subject property and the improvements made since the purchase provide compelling evidence of its value for tax year 2019. The analysis of Respondent's additional two comparables provide additional credible support of value.

The Board puts more weight on Respondent's three comparables sales (one of which is the subject property) than the sales presented by the Petitioner. The Board notes that on the adjustment grid on page 23 of Exhibit A, that the Respondent identified 21 possible units of comparison (including adjustment for market conditions). The Respondent applied five adjustments to comparable sale one (the subject property's 2015 sale), ten adjustments to sale two, and eleven adjustments to sale three. The Petitioner relied primarily on only two variables, square footage and age of construction, in selecting comparables for the Board to review. Conversely, Petitioner provided no adjustment grid and no adjustments to measure the market value of the differences between the subject and the comparable sales. The Petitioner also did not provide a map to aid the Board in determining the location of the comparables. Initial selection of comparables and adjustments to the comparables are key steps in the appraisal process. The Board concludes that the comparables selected by the Respondent (including the selection of 2390 Kenwood over 2370 Kenwood) are more similar to the subject than those selected by Petitioner, and that the adjustments Respondent's appraiser made to the comparables substantially support the concluded value.

The Board is convinced that data presented in Respondent's Rebuttal Exhibit B, page 1, which showed homes in the city of Boulder designed by Charles Haertling, six of which sold in the 5-year data collection period, addresses the marketability of homes designed by this architect. The Board does not consider the post-base period sales in its deliberations. Respondent's expert witness testified that he did not rely on the analysis contained on Page 2 of Exhibit B in support of the indicated value of the subject. The Board also does not rely on this grid in its consideration of value.

The Board does not address the issues presented by the Petitioner regarding valuation of the subject prior to nor subsequent to 2019 (the tax year in question) nor the assessed values of other properties. The Board can only consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market

approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). Once the actual value of the subject property has been determined, the Board can then consider an equalization argument, if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were derived by application of the market approach and that each comparable was correctly valued. *See* § 39-8-108(5)(b), C.R.S. (“The assessor’s valuation of similar property similarly situated shall be credible evidence.”) However, there was no evidence or testimony presented which shows the Board that the assigned value of the equalization comparables was derived by application of the appropriate approaches to value and that the comparables were correctly valued. Because that evidence and testimony was not presented, the Board gave no weight to the equalization argument presented by Petitioner. *See Podoll*, 935 P.2d at 17-18 (“equalization is not a proper means of evaluating the value of a property’s specific improvements”).

The Board finds that Petitioner has failed to meet his burden of showing that the Assessor incorrectly valued the subject property for the 2019 tax year.

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.

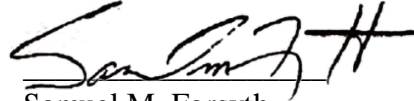
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

See § 39-8-108(2), C.R.S. (2019) (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (2019) (rights to appeal on an abatement petition).

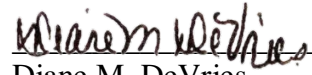
DATED and MAILED this 13th day of January, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

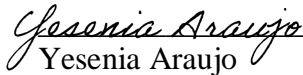

Samuel M. Forsyth

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 order of the Board of Assessment Appeals.


Yesenia Araujo