

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78928
Petitioner: MARY PATRICIA NANCE LIVING TRUST v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 3, 2020, Diane M. Devries and Louesa Maricle presiding. Petitioner appeared through Mrs. Mary Patricia Nance and her husband, Mr. Jim Nance, pro se. Respondent was represented by Michael A. Koertje, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1 and 2, and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

706 Kalmia Avenue, Boulder, CO
County Schedule No.: R0060492

The subject property is a multi-story, custom built single family residence built in 1989 on a 20,835-square foot flag-shaped lot. The four bedroom residence has 2,998 square feet above grade, and an attached three car garage. Respondent described the residence as very good quality construction, in average condition. The parties agreed most of the interior finishes are original. A significant portion of the property is affected by being in a flood plain. A portion of the Two Mile Ditch crosses the site providing some flood water mitigation, and a public easement for access to the ditch affects the property.

The subject property's actual value assigned by the County Board of Equalization ("CBOE"), and the value requested by Petitioner, are:

CBOE's Assigned Value:	\$2,000,000
Petitioner's Requested Value:	\$1,700,000

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 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.

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).

Colorado statutes governing the appeal of an assessment valuation do not allow comparison of component parts of total value. *See* § 39-5-122, C.R.S.; § 39-8-106, C.R.S.; § 39-8-108(1), C.R.S.; *Cherne v. Bd. of Equalization of Boulder Cty.*, 885 P.2d 258, 259 (Colo. App. 1994); *City & County of Denver v. Bd. of Assessment Appeals of State of Colo.*, 848 P.2d 355 (Colo. 1993) (although assessor may initially isolate lessor’s and lessee’s interests in property, property is assessed as unit and only one single assessment produced). “At each level, a party may seek review of only the total valuation for assessment, and not of the component parts of that total. Each statute speaks only of the right to appeal the ‘value’ or the ‘valuation assessment’ set by the Assessor.” *Cherne*, 885 P.2d at 259. “Notably absent from these statutes is language that would permit a party to limit the scope of the protest by appealing only a portion or component of the assessed value.” *Id.* at 260.

FINDINGS AND CONCLUSIONS

Mrs. Mary Patricia Nance and her husband, Mr. Jim Nance, both provided testimony on behalf of the Petitioner Trust. Petitioner claims the 2019 mass appraisal assigned value is an unrealistic 56% increase over the 2017 valuation. Petitioner contends Respondent’s sales do not have the subject’s negative site issues of a shared access driveway with an adjacent property, the bisecting ditch, the limitations imposed by the public easement, or the stigma of having had part of the property flood in 2013. (The garages and open areas had flood water damage and debris, but the house itself was not flooded.) Petitioner further claims Respondent’s sales are of homes that have been renovated, so are in superior condition relative to the subject property. Petitioner also argues the value of the subject property should be lower because of the original condition of the improvements, the stigma of the flood plain location that requires costly flood insurance, and the negative impact of the public access easement that prohibits Petitioner from building improvements on that easement area or fencing the site. Petitioner stated that the City of Boulder hired consultants in 2018 to investigate flood mitigation alternatives for the Two Mile and Upper Goose Creek areas. Per Petitioner’s testimony, one alternative presented would make the Two Mile Ditch into a wide, open channel to contain the 100-year flood. Petitioner explained that expanding the ditch would require the City to use eminent domain to acquire the subject property and demolish the improvements.

I. 2019 Value Increase Over 2017 Assessment

County assessors are required under State statute, § 39-1-104, C.R.S., to appraise all real property in the county every two years. For residential properties, the assessor must use sales from the specified base period for that assessment cycle. The assessor must use the market approach methodology, relying on comparable sales, to estimate value for a new two-year assessment period. *See* Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. The estimate of value is not based on the application of a percentage change in value from one two-year assessment period to the next. Petitioner did not present evidence that the subject property was accurately valued for the 2017 assessment. The Board concludes that Petitioner’s comparison of the 2019 value to the 2017 assessment is not a valid methodology argument.

II. Equalization Argument

Petitioner used an equalization argument to support Petitioner's requested value of \$1,700,000. Petitioner compared the assigned value of the subject property to the value assigned to the property at 800 Kalmia Avenue. 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 comparable was derived by application of the appropriate approaches to value and that the comparable was correctly valued. Because that evidence and testimony was not presented, the Board gave little weight to the equalization argument presented by Petitioner. *See Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 17-18 (Colo. 1997) ("equalization is not a proper means of evaluating the value of a property's specific improvements.")

III. Petitioner's Value Analysis

Petitioner relied on Respondent's comparable sales presented at an earlier appeal level, extracting sale prices per square foot of land and improvements separately to estimate values for those components for the subject property. Petitioner concluded to a value of \$500,000 for the improvements, \$1,200,000 for the land, and a total value for the subject property of \$1,700,000. Three of the sales presented were also used by Respondent.

The Board finds Petitioner's methodology of allocating comparable sale prices between land and improvements, averaging the indicated sale prices per square foot for each component and then adding them together for a total value, is not valid methodology for this appeal. The Board concludes that Colorado statutory law does not allow comparison of component parts of total value. The Board further finds that adjustments must be considered and made to each sale in comparison to the subject property for differences including, but not limited to, characteristics such as site size, location, above grade square footage of the residence, unfinished or finished basement space, number of bedrooms and bathrooms, garage spaces, and age, quality, and condition of the improvements. Adjustment must also be considered and made where appropriate for changing market conditions from the date the comparable property sold to the effective date of value, in this case, June 30, 2018. The Board concludes that Petitioner's lack of market adjustments and use of sale price averaging is inadequate to produce a credible indication of value for the subject property.

IV. Inferior Condition of the Improvements

Respondent described the condition of the subject improvements as average. Respondent's expert witness testified he inspected the exterior of the subject property, but because of the COVID-19 pandemic and social distancing recommendations, the witness did not inspect the interior of the residence. Even so, the witness agreed with Petitioner that overall, the finishes are original. The Board finds Respondent's witness adjusted the sale price of all the comparable sales

downward to reflect more updated conditions.

V. City of Boulder Flood Mitigation Investigation

The Board finds no evidence was presented to demonstrate that the City of Boulder had decided to try to take the subject property through an eminent domain proceeding for the purpose of a new flood mitigation project as of the January 1, 2019 assessment date, or even since that date. The Board concludes that adjusting the value of the subject property based only on that possibility, as a mitigation alternative presented in a consultant report, is not supported by sufficient evidence, nor was it supported with evidence from the market.

VI. Negative Site Issues

The Board finds that Petitioner did not present any market evidence that the flag-shaped lot with a shared access drive negatively impacts value, and concludes a downward adjustment in value for those characteristics was not supported. The Board does find Petitioner's evidence credible that the flood plain location, flooding of a portion of the property in 2013 (garages and open areas, but not the residence itself), the ditch that bisects the property, and the public easement restricts the size of the building envelope and prohibits structures in the easement area do likely impact the value. Petitioner provided testimony that the flood plain designation, ditch, and public easement were in place when Petitioner purchased the site and built the residence. The evidence presented by both parties demonstrated that the portion of the site next to the ditch and the public easement area can be used as outdoor space. A bridge over the ditch provides access to that portion of the site on the other side.

Without a recent sale of the subject property, it is difficult to quantify differences in impact of the flood plain between the subject and Respondent's Comparables 2 and 3, or the dollar value impact of those particular site issues. The Board finds Respondent did make downward flood plain adjustments to Sales 1 and 4 because they are not impacted by a flood plain. The \$75,000 adjustment was based on the Assessor's multiple regression sales analysis of properties with and without flood plain impact in Boulder County. The Board acknowledges there could be different adjustments to individual properties for flood plain impact. However, Petitioner did not present any market evidence to support a different dollar adjustment.

VII. Respondent's Value Analysis

The four comparable sales presented by Respondent in its appraisal range in sale price from \$1,995,000 to \$2,875,000, before market adjustments. Like the subject property, all four of the sales are on Kalmia Avenue and Sale 2 is next door to the subject. Based on the similarities in location and custom built home construction quality, the Board finds these sales are appropriately representative of the subject property's value under the market approach.

Respondent presented expert testimony by Ricardo Galvan, a Certified Residential Appraiser in the State of Colorado, employed by the Boulder County Assessor's Office, who testified in relevant part that he concurred with Petitioner that the subject property is affected by the flood plain, and that he found it credible that most of the interior finishes of the residence are

original. Mr. Galvan testified that two of his comparable sales are also affected by a flood plain. Mr. Galvan presented a discussion of adjustments made to each sale in comparison to the subject for changing market conditions (the time adjustment), and for differences in physical characteristics including, but not limited to, age and condition of the improvements, and flood plain and access easement impact. After market adjustments, the indicated values for the comparables range from \$2,049,229 to \$2,545,410. The witness gave less weight to Sale 4 in concluding to a market value for the subject property of \$2,100,000, toward the low end of the adjusted range of values. Mr. Galvan testified he concluded to a lower value than indicated by most of the comparables because the subject has more negative site issues. The Board is persuaded that Respondent made a good faith effort to adjust the sales downward for condition and the negative site issues affecting the subject.

The Board places more weight on the evidence of Respondent than on the evidence of Petitioner, primarily because of the appraisal methodology used.

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has failed to meet its burden of proving that the assigned value for tax year 2019 is incorrect.

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.

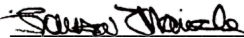
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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 7th day of January, 2021.

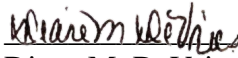
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Louesa Maricle

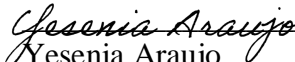
Concurring Board Member:



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