

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 79107</b>
Petitioner:  <b>BELCARO TSP LLC,</b>  v.  Respondent:  <b>DENVER COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on November 20, 2020, Samuel M. Forsyth and Louesa Maricle presiding. Petitioner was represented by Stephen Rynerson, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits 1–4 and Rebuttal Appraisal Exhibit 5, and Respondent’s Exhibit A.

**DESCRIPTION OF THE SUBJECT PROPERTY**

3400 Belcaro Dr.  
County Schedule No.: 05135-08-015-000

The subject property is described by the Petitioner as “a luxury, estate single-family residence also known as the ‘Phipps Mansion’....” (Exhibit 5, page 3.) Petitioner’s appraisal further described the property as follows:

Constructed in the 1930’s, the home offers extraordinary architectural details including extensive ornamental brick work and the main entrance is marked by architectural columns that support an elaborate carved archway. The exterior windows are adorned with masonry keystones. Interior details finish of the home include high ceilings throughout, with the walls, ceilings and fireplaces offering intricately carved and sculpted woodwork throughout the first and second levels.

(Exhibit 5, page 4.) The residence is listed on the National Register of Historic Places and the tennis pavilion has a historical designation from the City of Denver. The Respondent’s and Petitioner’s appraisal experts disagreed to a small degree on the square footage of the residential improvement and the tennis pavilion on the subject site. Following are the square footage determinations used by the Board in its deliberation:

<b>Residence</b>	<b>Gross Building Area</b>	<b>Finished Area</b>	<b>Unfinished Area</b>
1st and 2nd floor	16,674	16,674	0
Basement	9,585	9,000	585
Sub Basement	2,939	0	2,939
Attic	3,587	0	3,587
<b>Total Residence</b>	<b>32,785</b>	<b>25,674</b>	<b>7,111</b>

<b>Tennis Pavilion</b>	<b>Gross Building Area</b>	<b>Finished Area</b>	<b>Unfinished Area</b>
1st and 2nd Floor	6,377	6,377	0
Court	8,146	8,146	0
Basement	5,080	0	5,080
<b>Total Pavilion</b>	<b>19,603</b>	<b>14,523</b>	<b>5,080</b>

	<b>Gross Building Area</b>	<b>Finished Area</b>	<b>Unfinished Area</b>
<b>Total Areas</b>	<b>52,388</b>	<b>40,197</b>	<b>12,191</b>

The subject property’s actual value, as assigned by the Denver County Board of Equalization (CBOE), and the value requested by Petitioner and Respondent, are:

CBOE’s Assigned Value:	\$ 13,437,000
Respondent’s Recommended Value:	\$ 13,437,000
Petitioner’s Requested Value:	\$ 8,180,000

### **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.

### **ARGUMENT**

Petitioner called two witnesses. First to testify was William M. James, MAI, CCIM. Mr. James testified to Exhibits 1 and 5, Appraisal Reports for the subject property, that he co-authored with Denise K. Moore. Mr. James is President and Director of James Real Estate Services, Inc. He is licensed as a Certified General Appraiser by the State of Colorado. Ms. Moore is also associated with James Real Estate Services as a Director, Multifamily Valuation. Ms. Moore is licensed as a Certified General Appraiser by the State of Colorado. Ms. Moore did not attend the hearing nor did she testify. Exhibit 1 was an Appraisal Report of the subject property with an effective date of June 30<sup>th</sup>, 2018. The date of the appraisal was May 1, 2020. The appraisal concluded to a value of \$9,550,000. Exhibit 5 was an Appraisal Report of the subject property with an effective date of June 30, 2018. The date of the appraisal was October 28, 2020. This appraisal was characterized as an “Update Actual Appraisal”. This appraisal concluded to a lower value than the May 1, 2020 of \$8,180,000. This exhibit was offered as a rebuttal exhibit. The authors of the updated appraisal stated under the section titled “Update Appraisal”:

This appraisal is intended to also serve as an update of previous appraisals conducted by the Appraiser and Associate. Reference is made to the appraisal reports dated January 19, 2018, November 10, 2015 and May 5, 2020 with appraised values of \$10,380,000, \$9,650,000 and \$9,550,000 respectively, which by reference, are incorporated in this report. The difference in appraised value since the previous appraisal appears to result from a continued slow luxury home market in Denver. Additionally, after review of the appraisal report prepared for the Denver Assessor, corrections to the analysis resulted in a lower value indication.

(Exhibit 5, page ii.)

On cross examination, Mr. James could not identify the differences between the appraisal presented in Exhibit 1 and the rebuttal appraisal in Exhibit 5. The Board shall rely on the analysis and representations of the appraisal iteration in Exhibit 5 for its analysis of the value of the subject.

Mr. James' appraisal offered the opinion that the Denver market for properties over \$10,000,000 had very little sales activity, limited interest, and that there are few qualified buyers at this price point. (Exhibit 5, page 13.) He testified the market for homes over \$4,000,000 had "dropped off" during the data collection period. He identified ten comparable sales that sold between May 2017 to June 2018. The appraisers provided a location map of the comparable sales but not photographs of the sales. The average time between date of sale and the appraisal date was 6 months. The appraisal stated that greatest emphasis in the selection of comparables was placed on similar location, access, traffic exposure, age/condition/quality, gross living area, land to building ratio/parking ratio and highest and best use to the subject. (Exhibit 5, page 14.) Mr. James stated the owner did not permit the inspection of the subject property by the appraisers for purposes of this appraisal, and asked that an assumption be made that the finish work was of high quality. A list of expenses and costs was also not made available to the Respondent's experts.

- The land area of the subject is 282,000 square feet (6.5 acres). The land area of the ten comparable sales ranged from 13,504 square feet to 447,361 square feet. The average lot size of the 10 sales is 128,371 (2.95 acres). The median site size of the ten comparable sales is 102,148 square feet (2.45 acres).
- Of the ten comparable sales, two had year of construction similar to the subject – comparable sale 4 was originally constructed in 1933, comparable sale 8 constructed in 1922. The remaining eight sales were originally constructed between 2000 and 2010 with an average year of construction of 2004.
- Comparables sales 3, 4, and 10 are the closest sales to the subject, within 0.9 to 2.4 miles of the subject. The remaining seven comparable sales are between 3.2 and 24.4 miles from the subject, an average distance of approximately eight miles and a median distance of approximately six miles.
- The total square foot area of the subject improvements is 52,388 square feet. The total square foot area of the comparable sales ranged from 11,346 square feet to 22,591 square feet. The average total square foot area of the comparables is 16,030 square feet.

- The finished gross living area of the subject is 16,674 square feet. The finished gross living area of the comparable sales ranged from 7,358 square feet to 17,851 square feet. The average finished gross living area of the comparables is 11,069 square feet.

Mr. James chose average sale price per gross living area as the primary unit of comparison to which adjustments were applied for location, site/view/access, size of gross living area, garage/carport, and “other.” (Exhibit 5, pages 14-18, 62-63.) “Other” accounts for an additional 16,111 square feet of space in the basement (of which 9,000 is finished), sub-basement (containing the geo -thermal plant) and attic which is unfinished. (Exhibit 5, page 17.)

Mr. James noted that the tennis pavilion is 19,603 square feet. He stated that the tennis court floor has been removed, that the first and second floors, although currently finished, require extensive renovation, and that the pavilion is in poor shape and adds no functional utility except for storage. For these reasons, the appraisers state that no adjustment is applied for the tennis pavilion in the appraisal. No adjustment was made for change in market conditions. After adjustments and weighting of the comparables, the appraisal reconciled to a value per square foot of \$490.53. Multiplied by the gross living area of the residence of 16,674 square feet, the appraisal concludes to a value of \$8,180,000 (rounded).

In direct testimony, Mr. James stated that he would not have used any of the comparables offered and analyzed by the Respondent’s expert witness for a variety of reasons. He stated that comparable sale 2, located at 333 Milwaukee, was a poor comparable because of the large adjustments and that it was located some distance from the subject. He stated that the building area and the land area of this comparable sale were very dissimilar compared to the subject. He expressed the same concerns about comparable four, located at 32 Polo Club Circle. Mr. James opined that comparable sale 5 at 1681 E. Cedar Avenue was less reliable due to its age and the fact that, unlike the subject, the land on this sale could be and eventually was subdivided into extra building sites. He also stated that comparable sale 5 at 190 High Street, which sold on 5/2013, was outside the statutory evaluation period and was not offered on the open market.

Petitioner then called as a witness Mr. Scott Miller, one of the owners of the subject property. Mr. Miller stated that the property was purchased in April of 2010 for \$9,200,000. The seller was the University of Denver. The home was viable for occupancy at the time of the sale. Subsequent to the sale, the owner testified that approximately \$10,000,000 was invested in renovation and restoration. (He distinguished this investment from remodeling, stating that the work could be characterized more as “restoration” than “renovation.”) He stated, for example, that \$400,000 was invested in a new roof, much more than would be required for a home without historical building restrictions. Mr. Miller stated that the comparables used by the city were in areas superior to the Belcaro neighborhood. He stated that the homes around the subject were not as similar to the subject property as homes in the neighborhoods of the comparables. He testified that properties such as the subject, which have historical designations, are not only are more difficult renovate and refurbish due to restrictions but also were more expensive to maintain. He believed that these factors all have a negative effect on value. Mr. Miller had similar concerns about the city’s comparable sales as were testified to by Mr. James.

The Board asked Mr. Miller why he did not allow his own appraiser to inspect the finished

product of subject renovation and restoration. He said that a personal matter prevented permitting the inspection and that the appraiser had already inspected the home at a time when the bulk of the restoration was being done. He was also asked why a list of expenses for the renovation was not provided to his appraiser – he replied that the way the expenses were listed that it would not be reflective of which work might have contributed to the market value and which work was done merely to update the features of the home, for instance replacing the roof. Mr. Miller testified that “over \$10,000,000” of improvements were made to the property, and that the interior finish renovations were complete as of the assessment date of January 1, 2020.

The Respondent called as a witness Ms. Diana Chilcutt. Ms. Chilcutt is a licensed Certified Residential Appraiser employed with the Assessment Division of the Department of Finance of the City and County of Denver. Ms. Chilcutt testified that she did not inspect the interior of the subject property as finished, but had inspected it in September 2015. Ms. Chilcutt characterized the subject as a “superadequacy as it is in excess of 95% of the single-family home (sic) in Denver County”. (Exhibit A, page 6.) She identified five comparable sales for analysis of the subject property. The sixth sale at 190 High Street is not considered by the Board because it reportedly sold 1 month beyond the extended statutory data collection time frame of 5 years prior to the appraisal date. It sold in May 2013 – the statutory time frame commenced July 1, 2013.

- The land area of the five comparable sales ranged from 14,061 square feet to 63,279 square feet. The average lot size of the five sales is 45,032 square feet (1.03 acres).
- Of the five comparable sales, comparable sales 4 and 5 had original year of construction of 1960 and 1930 respectively. The average actual year of construction of the 5 sales was 1983.
- The distance of the comparable sales from the subject ranged from .26 miles to 1.41 miles, averaging 0.85 mile.
- The finished gross living area of the comparable sales ranged from 4,627 square feet to 9,694 square feet. The average finished gross living area of the comparables is 8,496 square feet.

The appraiser made quantified adjustments for land size supported by effective land sales found on page 30 in Exhibit A. Additional units of comparison with quantified adjustments were for market conditions, bedroom/bath count, gross living area, basement, and basement finished. Qualitative adjustment “acknowledgements” were made for quality of construction, age, condition, heating and cooling, garage, fireplaces, tennis pavilion, sub-basement/ geo-thermal heat, and separate generator. Ms. Chilcutt explained that the qualitative adjustments do not mathematically contribute to the final valuation calculations. The appraisal states:

Further adjustment for the purposes of this assignment (2019 Valuation) are not made. There was not sufficient data to extract these adjustments. Moreover, there would be a series of primary positive adjustments that would make a much larger conclusion of value due to the superadequacy of the subject. Sales 1 & 2 are most weighted. 1 and 2 are similar in age based on the effective age of the subject. Moreover, sale 2 supported the recognition of geothermal. All other sales support

the estimate of value through the significant upward qualitative +++'s.

(Exhibit A, page 5.)

Based on the quantitative adjustments, the adjusted value of the five comparables were \$15,769,500 (80% gross adjustments), \$15,790,700 (126% gross adjustments), \$13,303,500 (116% gross adjustment), \$12,655,200 (140% gross adjustment) and \$11,572,300 (107% gross adjustment).

### **FINDINGS AND CONCLUSIONS**

Colorado case law requires that “[Petitioner] must prove that the assessor’s valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent’s valuation of the subject for tax year 2019 is incorrect.

The Board acknowledges that a prodigious property with unique characteristics and historical significance such as the subject provides a difficult appraisal problem.

After careful consideration of the exhibits and testimony, the Board finds that the appraisal approach undertaken by Ms. Chilcutt provides more convincing evidence of the value of the subject property than the valuation evidence presented by Mr. James. This conclusion relies in part on the Board’s determination that the comparable sales selection and the adjustment scheme provided by Ms. Chilcutt is more convincing than that of Mr. James. This conclusion is based on several factors. The location of Mr. James’ comparables appears to discount the location of the subject, as if the value of the subject was little affected by its location. The Board does not agree with the Petitioner’s view of the location of the subject. The character of the improvements and the overall proximity of the location of the subject property to the Denver Country Club/Polo Club neighborhood more than provides insulation from any argument that sale comparables need to be found outside of Belcaro and in the Denver suburbs. Likewise, the Board does not agree with Petitioner’s contention that the subject’s neighborhood is inferior to those nearer the Denver Country Club or Cherry Hills Village. It is the Board’s determination that Ms. Chilcutt has more accurately identified the sales that would be in the same market as the subject; that is, the participants in this market would more likely consider Ms. Chilcutt’s sales, rather than Mr. James’ sales, by virtue of their nature and location.

The Petitioner’s adjustment scheme is also of concern to the Board. The Petitioner states that “An Adjustment Grid behind the Summary page analyzes the sale comparisons based on price per square foot of gross living area, the most appropriate unit of comparison in this analysis.” (Exhibit 5, page 14.) In recreating the sales grid, the Board determines that there is inconsistency in whether the Petitioner developed a sale price per living area or sale price per total square footage.

	subject	1	2	3	4	5	6	7	8	9	10
address	3400 Balcaro	21 Sunset	9 Lynn Road	530 University	177 Humboldt	14 Willage Rd	1295 Silver Rock Lane	1 Cantitoe Ln	930 East 7th Avenue	22 Cherry Hills Park Dr.	1931 East Alameda Avenue #6
sale price		\$7,500,000	\$4,700,000	\$3,312,000	\$4,975,000	\$4,125,000	\$5,100,000	\$4,250,000	\$3,250,000	\$4,250,000	\$5,850,000
total sf from Exhibit 5*	52,388	22,591	16,041	15,492	12,316	17,032	15,758	15,682	11,346	22,325	11,716
Exhibit 5**	16,674	17,851	11,640	15,492	8,362	12,370	10,469	10,614	7,445	14,990	7,358
Sale Price / SF taken directly from Exhibit 5		\$ 331.99	\$ 305.65	\$ 213.79	\$ 430.51	\$ 255.88	\$ 487.15	\$ 285.29	\$ 304.39	\$ 192.83	\$ 514.15
square foot of 'Total SF' calculated by Board*		\$331.99	\$293.00	\$213.79	\$403.95	\$242.19	\$323.65	\$271.01	\$286.44	\$190.37	\$499.32
Sale price per square foot of 'Living Area' calculated by Board**		\$420.14	\$403.78	\$213.79	\$594.95	\$333.47	\$487.15	\$400.41	\$436.53	\$283.52	\$795.05
*An Adjustment Grid behind the Summary page analyzed the sale comparisons based on price per square foot of gross living area, the most appropriate unit of comparison in his analysis." page 14 of 76 Exhibit 5											

Note: The Petitioner's concluding value is based on the reconciled value per square foot multiplied by the living area of 16,674 square feet of the subject.

The Board recognizes the large number of individual adjustments and total gross adjustments in Ms. Chilcutt's appraisal. Nevertheless, the Board believes that the unique characteristics of the subject and the superior comparable sales selected by Ms. Chilcutt result in her quantified adjustments having more reliability than the qualified adjustments applied in the Petitioner's appraiser's adjustment grid. The adjustments applied by Mr. James are generally smaller, but lack support and do not appear to capture the scope or extent of the differences between the subject and the comparables. Specifically, the Board does not find credible the minimal percent adjustments under the "other" category, that apparently is meant to measure the market impact of 16,111 square feet of space in the basement (of which 9,000 is finished), sub-basement (containing the geo-thermal plant) and unfinished attic. The Board also finds Ms. Chilcutt's conventional residential appraisal method, in which the units of comparison are defined, individually quantified, and then totaled, a more reliable method than that used by Mr. James, in which the single unit of comparison of sale price per square foot of living area was adjusted for differences using qualified adjustments.

It was uncontested that the Petitioner's appraiser was not allowed to inspect the interior of the subject property after the interior renovation and restoration were completed, and that the expenditures for this work totaled over \$10,000,000. Additionally, the Petitioner did not provide to their appraisers a list of the improvements and costs associated with the substantial work done on the property since the 2010 purchase. It was also uncontested that an interior renovation to the subject had been fully completed by the assessment date of January 1, 2019. The Board is hard pressed to cite an example where a Petitioner denies access or salient cost figures to its own appraiser. The Board finds that Petitioner's refusal to allow an interior inspection of the subject, especially when the quality and condition of interior finish is a significant component of the value of the subject property, calls into question the credibility of the Petitioner's valuation conclusions. The Petitioner's appraisers appear to agree. The appraisal states:

Since a typical purchaser would do so, the Sales Approach is relied upon exclusively in this appraisal. The Cost and Income approaches are considered



relatively unreliable and not used. The exclusion of the Cost approach does not reduce the reliability of the appraised value. **However, the limited and dated inspection of the subject residence interior reduces the reliability of the Sales Approach.**

(Exhibit 5, page 6) (emphasis supplied). The Board agrees.

The Board recognizes the challenges inherent in the appraisal of a property with such unique characteristics. The Board concludes that the substantial sums invested in the property since the latest sale transaction, the better comparable selections of the Respondent, the preferred quantified adjustment calculations of Ms. Chilcutt, and the overall method and manner of the appraisal process engaged in by Ms. Chilcutt supports the value established by the Denver County Board of Equalization. The Board concludes Petitioner did not meet its burden of showing that the Respondent's value 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 24th day of May, 2021.

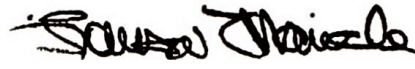
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



Samuel M. Forsyth

Concurring Board Member:



Louesa Maricle

*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.



Casie Stokes