

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p>	<p><b>Docket No.:</b> 78778</p>
<p>Petitioners:</p> <p><b>JEFFREY FLYNN and KAREN SANDBURG,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>BOULDER COUNTY BOARD OF EQUALIZATION.</b></p>	
<p align="center"><b>FINAL AGENCY ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 7, 2020, Sondra Mercier and Valerie Bartell presiding. Petitioner Jeffrey Flynn appeared pro se on behalf of Petitioners. Respondent was represented by Michael A. Koertje, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioners’ Exhibit 1, Appraisal of Subject Property, Respondent’s Exhibit A, Appraisal of Subject Property and Respondent’s Exhibit B, Rebuttal to Exhibit 1.

**DESCRIPTION OF THE SUBJECT PROPERTY**

Address: 1440 King Avenue, Boulder, CO 80302  
County Property ID: R0003583

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

CBOE’s Assigned Value:	\$ 2,853,600
Petitioner’s Requested Value:	\$ 2,250,000
Board’s Concluded Value:	\$ 2,853,600

## **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 single-family residential property located in the City of Boulder, Colorado. The subject was constructed in 2016, and is situated on a 14,246 square foot site. Petitioner provided an appraisal, admitted as Exhibit 1, performed by W. Earl Wilson, a Certified General Appraiser. Mr. Wilson appraised the property as of December 15, 2017 for \$2,250,000. The client named in the appraisal report provided was Wells Fargo Home Equity. Mr. Wilson also appeared and testified as Petitioner's expert witness.

Respondent provided Exhibit A, an appraisal of the subject property as of June 30, 2018 for \$3,100,000 by David Arthur Martinez, licensed Ad Valorem appraiser, who was admitted as Respondent's expert witness. Respondent also provided Exhibit B, a map with economic areas for the subject and six comparable sales described in Exhibit 1. Respondent requested the current actual value assigned to the property of \$2,853,600 be affirmed.

Both Petitioner and Respondent provided appraisals by qualified appraisers as support for their respective estimates of value. The parties' disagreements stem back to selection of comparable sales, and which sales were more relevant. In particular:

- Location of comparable sales, and their relevance to the subject property.
- Date of construction for comparable sales used.
- Location of portions of the subject's site in a flood plain, and the resulting impact on value.
- The application of an adjustment for market conditions (time trending).
- Whether a comparable sale that contracted within the base period but closed outside of the base period can be considered.
- The relevance of the cost approach in valuing the subject.

In regard to the location of comparable sales, Respondent's witness testified that the subject's location is akin to "beachfront" property, and that sales within the same economic area as the subject should be utilized, or in lieu of available sales, comparable sales from similar economic areas should be considered, with appropriate adjustments performed. Respondent's witness testified that the comparables used by Mr. Wilson in Exhibit 1 were in an inferior economic area. Respondent's witness also asserted that some of the comparables used in Exhibit 1 were located in view of high-tension power lines, an inferior view to the subject. Exhibit 1 did not address presence or absence of high-tension power lines, nor were any locational adjustments performed. It was the opinion of Petitioner's witness that the year of construction of the comparable sales is more relevant than the location. However, no support was provided to demonstrate the locations of the comparable sales were similar to the location of the subject. The Board determines that the Petitioner failed to show that the locations of his selected comparables are sufficiently similar to the subject's.

In regard to the age (date of construction) of the sales comparables, Petitioner asserted that the Respondent's use of two comparable sales, one with a 2003 year of construction, and one with a 1951 year of construction, are not sufficiently similar to the subject's newer construction year of 2016. Petitioner's Exhibit 1 includes comparable sales of single-family residential property with the same year of construction as the subject. Respondent's Exhibit A stated that the comparable

sale constructed in 1951 was remodeled in 2008, and that a third comparable, constructed in 2016 was also considered in the analysis. Respondent's report brackets of the age of the subject with adjustments for effective year built. Therefore, the Board determines that the variable of age was appropriately considered by Mr. Martinez in his appraisal. The Board determines that Petitioner failed to show that Mr. Martinez did not factor the date of construction into his market approach analysis.

A portion of the subject site, along the rear property line, is located in a flood plain. Neither appraiser adjusted their comparable sales prices for a flood plain influence. However, Mr. Wilson testified to his opinion that any land located in the flood plain is surplus land with little value, and Petitioner called into question Mr. Martinez's upward adjustments to comparables for site size. Mr. Martinez's market analysis includes adjustments for site size ranging between \$32,016 and \$88,620. Mr. Wilson stated that all comparable sales used represented an economic unit, that is, each parcel was a buildable lot, and he made no adjustments for site size in part because a portion of the site was in a flood plain. The Board was not persuaded by Petitioner that site size should not be utilized as an element of comparison for the subject. However, the Board notes that even after removing this adjustment from consideration, the reconciled value of the subject arrived at by Mr. Martinez would remain above and therefore supportive of the 2019 actual value assigned to the property.

Mr. Wilson's appraisal values the subject as of a date six months prior to the June 30, 2018 date of value for tax year 2017 (it was a loan appraisal with an effective date of December 15, 2017, not completed for purposes of the appeal hearing). Mr. Wilson's comparable sales were therefore not time-trended to the appraisal date. Mr. Wilson testified he did not believe his comparables' sales prices required adjustment for market conditions, as property at the subject's price point did not increase at the same rate as the market overall. Mr. Martinez's appraisal included an analysis of market trends for the subject's economic area; however, two of the three comparable sales used occurred at the end of the base period and did not require market adjustments. Colorado law requires county assessors to analyze sales data to determine if any differences exist between market conditions at the time of a comparable sale, and the valuation date for the subject property being appraised. §§ 39-1-103(8)(a)(I), 39-1-104(10.2), C.R.S. Depending on market conditions, the assessor may adjust comparable sales prices, resulting in an estimate of what the comparable would have sold for on the date of value. *See* A.R.L. Vol. 3, pp. 2.21-2.22. In the absence of contrary data, the Board relies on Respondent's time-trending data (Exhibit A, p. 16) and finds it is likely that Mr. Wilson's comparable sales prices required upward adjustment for market conditions between their dates of sale and the date of value.

Petitioner contended the use of one comparable sale in Exhibit A, which closed on July 17, 2018, should not be considered, as the close date falls outside of the base period. Respondent cited case law that permits the Board to consider a comparable sale so long as the property was under contract during the base period - *Platinum Properties Corp. v. Bd. of Assessment Appeals*, 738 P.2d 34 (Colo. App. 1987). The Board agrees with Respondent.

Lastly, Mr. Wilson performed a cost approach within his appraisal, citing his belief as to its relevance to valuation given that the subject was newly constructed. Mr. Wilson testified that he did consider the cost approach in reaching his value conclusion, and that it "tempered" his value

conclusion. To the extent this is the case, it undermines that value conclusion, because 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 Board concludes that Petitioners failed to establish, by a preponderance of the evidence, that the Assessor's valuation for the subject property was incorrect for tax year 2019.

### **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).

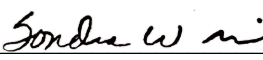
**DATED and MAILED** this 25<sup>th</sup> day of February, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

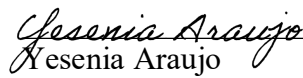
  
\_\_\_\_\_  
Valerie C. Bartell

Concurring Board Member:

  
\_\_\_\_\_  
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