

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JAMES L. EIBERGER,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 49283</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 16, 2008, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Eugene Kottenstette, Esq. Petitioner is protesting the 2007 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1276 South Pennsylvania Street, Denver, Colorado
(Denver County Schedule No. 05221-14-020-000)**

The subject property is a brick and stucco 1 ½ story house on crawl space, built in 1893, on a 3,125-square-foot site. A detached garage sits at the rear of the site with alley access.

Respondent assigned an actual value of \$243,200.00 for tax year 2007 but is recommending a reduction to \$234,200.00. Petitioner is requesting a value of \$189,500.00.

Petitioner described the immediate area as influenced by commercial and industrial properties. The following businesses front South Pearl Street one block to the east and share the subject’s alley: 7-11, auto body and paint shop, and metal welding shop. The 7-11 parking lot is a gathering spot for police cars and emergency vehicles. The body/paint shop and welding shops produce fumes and exhaust. Delivery trucks use the alley for deliveries of food, beer, ice, etc. The subject property is three sites from East Louisiana Avenue, a street with heavy traffic and a bus

route. One bar is located across Louisiana and other bars and restaurants are within walking distance, all with delivery trucks creating noise and fumes and intoxicated patrons urinating and throwing beer bottles in the alley.

Petitioner described the subject's physical condition as below average with the following deficiencies: structural damage (settling, sloping floors, exterior cracks, damaged soffits); older roof with hail damage, no gutters; galvanized plumbing; 25-year-old asbestos-wrapped furnace; dated electrical wiring; original single pane windows; dated kitchen (asbestos flooring, steel cabinets, old fixtures and appliances); older bathroom with water damage; water tap shared by two homes (break, repair required); negative slope with resulting water damage; garage settlement; broken patio concrete. Petitioner was given an \$8,500.00 estimate for installation of three structural piers and \$15,000.00 for a more extensive cure. \$10,000.00 was spent in 2006 on the water tap repair, which involved underground access and re-splicing. Water pressure is poor, and installation of a larger pipe has been estimated at \$13,250.00.

Petitioner did not present an independent appraisal, rather commenting on Respondent's comparable sales. Mr. Eiberger argued that Sale 1's size was reported by MLS as 1,295 square feet and that the three off-street parking spaces should have added value. Respondent's witness, Mr. Timothy Muniz, Certified General Appraiser with the Denver County Assessor's Office, testified he relied on county records rather than MLS and he does not consider off-street parking spaces to carry value.

Petitioner based his requested value on the 2007 actual value of \$212,100.00 for the property next door (1284 South Pennsylvania Street). Petitioner testified that it was superior to the subject property with no structural problems, therefore the subject should be assigned a lower value. Petitioner also argued that the sale of this property should be considered; Respondent replied that he did not consider this sale comparable because it was a foreclosure with below-market pricing. The Board agrees that it is not preferable to properties marketed without duress.

Based on the market approach, Respondent's witness presented an indicated value of \$234,200.00 for the subject property. Mr. Muniz presented one appraisal with an exterior-only inspection and a second appraisal following an interior inspection. Using the same comparable sales, the second appraisal acknowledges inferior condition, corrects square footage, and applies greater location adjustments. Mr. Muniz presented three comparable sales ranging in sales price from \$238,000.00 to \$245,000.00 and in size from 998 to 1,227 square feet. After adjustments were made, the sales ranged from \$228,320.00 to \$243,100.00.

Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2007.

The Board agrees with both parties that the subject property is in fair-average condition. The Board agrees that Respondent's comparable sales are representative of the subject property and that adjustments were supported. The Board agrees with Respondent's appraisal and concluded value of \$234,200.00.

The Board agrees with Respondent's location adjustments, all of which were increased following inspection. All parties agree that the subject is impacted by negative surroundings. Sale 2 had no street frontage, thus experiencing some negative impact, and thus with a lesser adjustment.

The Board finds that Respondent's witness responded convincingly to Petitioner's conflicting data for comparable sales (sizes, basement finish, garages and parking) and that adjustments were supported. The Board agrees with Respondent's size adjustments and lack of size adjustment when the comparables were within 100 square feet in living area. Mr. Muniz replied to Petitioner's questioning the presence of a garage for Sale 3 by saying that older, poor-quality garages are not assigned value. He responded to Petitioner's testimony about basement finish for Sale 3 by saying that it could not be verified by assessor records.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property to \$234,200.00.

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

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 CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

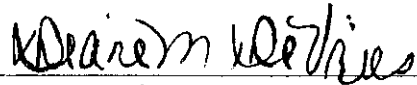
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

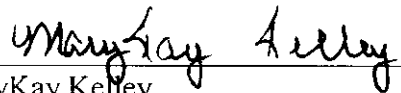
CRS § 39-8-108(2) (2008).

DATED and MAILED this 31st day of December 2008.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries




MaryKay Kelley

This decision was put on the record

DEC 31 2008

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Heather Flannery

