

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: HEATH ANDERSON v. Respondent: LA PLATA COUNTY BOARD OF EQUALIZATION	
FINAL AGENCY ORDER	

Docket No.: 76645

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 17, 2020, Debra Baumbach and Sondra Mercier presiding. Petitioner, Mr. Heath Anderson, appeared pro se. Respondent was represented by Kathleen Moore, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted into evidence Respondent’s Exhibit A. The Board heard the testimony of Petitioner. The Board also heard the testimony of Respondent’s expert witness, Maggie Cowing, an appraiser with the La Plata County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

**1221 Galaxy Drive, Durango
La Plata County Schedule No. R0113233**

The subject is a 2,296-square foot residence situated on a 0.73-acre lot. The residence was constructed in 2014 and identified as being of good quality. It is located in unincorporated La Plata County; however, it is in close proximity to the Durango City center. (Exhibit A, pgs. 7-8.)

The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by each party, are:

CBOE’s Assigned Value:	\$559,020.00
Petitioner’s Requested Value:	\$474,673.58
Respondent’s Requested Value:	\$559,020.00

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 AND AUTHORITATIVE SOURCES

In valuing residential properties for tax purposes, value must be determined solely by the market approach to appraisal. 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.

FINDINGS AND CONCLUSIONS

The subject is located in an unincorporated enclave of the county surrounded by city limits. Petitioner contends that the subject's unincorporated location is inferior to residences located within the city, due to inferior road maintenance, policing, snow removal, utilities such as sewer service and trash pick-up, as well as differences in voting rights. Mr. Anderson was unable to support this contention with market data or comparable sales. The Board was not convinced that an adjustment to value based on location was warranted.

Mr. Anderson requested a value of \$474,673.58 based on the average of three calculations: (1) A percentage increase from the prior year's value; (2) the value indicated for a property located nearby on Galaxy Drive after adjustment; and (3) analysis of sales he believed were located closer to the subject. Petitioner did not present market data supporting these calculations.

Respondent's witness, Ms. Maggie Cowing, an appraiser with the La Plata County Assessor's Office, completed a site-specific appraisal that included eight sales of residences that were of similar size and construction quality as the subject, and that were located in both the county and within the city limits. The sales were correctly adjusted to reflect changes in market conditions between the date of sale and the final day of the data collection period of June 30, 2018, in compliance with C.R.S section 39-1-104(10.2)(d). Although no other adjustments were made, Ms. Cowing arrayed the comparable sales based on their superiority or inferiority to the subject for improvement size, site size, and year of construction. The sales indicated an overall value range of \$569,000 to \$677,000 with a median of \$601,199, all in excess of the assigned value of \$559,020. (Exhibit A, pg. 31.) The Board found the appraisal report prepared by Ms. Cowing compelling.

Petitioner failed to provide alternative sales or market data to support the requested value. Further, Petitioner did not convince the Board that Respondent's data was flawed. Based on the findings and conclusions presented, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019, and failed to meet his burden of proof.

ORDER

The petition is denied. The 2019 actual value of the property shall remain as set by the La Plata County Board of Equalization at \$559,020.00.

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 19th day of October, 2020.

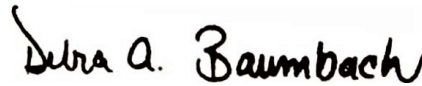
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Sondra W. Mercier

Concurring Board Member:



Debra A. Baumbach

*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