

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioner:

WALTER SCOTT McDONALD

v.

Respondent:

PITKIN COUNTY BOARD OF EQUALIZATION

Docket No.: 76705

FINAL AGENCY ORDER

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on June 11, 2020, Debra Baumbach and Sondra W. Mercier presiding. Petitioner appeared pro se. Respondent was represented by Richard Y. Neiley III, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-6 and Respondent’s Exhibit A. The Board admitted Cheryl A. Hasselbring, Senior Appraiser with the Pitkin County Assessor’s Office, as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

1000 E. Cooper Avenue, Aspen
Pitkin County Schedule No.: 2737-182-32-003

The subject property is improved with a 934-square foot single family residence constructed in 1886. The subject is designated as a Landmark Historic Site by the Historic Preservation Commission (HPC). An additional 461 square feet of living area was constructed as an accessory dwelling unit in 1965. The improvements are situated on a 2,654-square foot corner site.

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

CBOE's Assigned Value:	\$ 2,250,000
Respondent's Recommended Value:	\$ 2,080,000
Petitioner's Requested Value:	\$ 1,847,000

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.

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. See *Crocog Company v. Arapahoe County Bd. of Equalization*, 813 P.2d 768, 770 (Colo. App. 1990). Furthermore, equalization evidence, by itself, does not satisfy the requirement to provide comparable sales with appropriate

adjustment. As the Colorado Supreme Court stated in *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 18 n.12 (Colo. 1997):

While the valuation of property similarly situated is credible evidence at trial pursuant to § 39-8-108(5)(b), C.R.S., a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider an equalization argument as support for a value determined using the market approach. *See id.*

FINDINGS AND CONCLUSIONS

Petitioner, Mr. McDonald, contends that the land value assigned to the subject is excessive compared to that of neighboring properties. Petitioner relied on the assessor's assigned land values for nearby sites (Petitioner's Exhibit 6) to justify the argument of overvaluation of the subject's lot on a per square foot basis. Petitioner provided no comparable sales data for the consideration of the Board.

The Board can only consider an equalization argument as support for the value determined using the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). Further, for an equalization argument to be effective, Petitioner must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach.

Petitioner did not present sales data or a market approach to support the requested value. Further, no evidence was provided to show that the values assigned to the neighboring properties was correct. As that evidence was not presented, in the form of testimony or otherwise, the Board can give no consideration to the equalization argument presented by Petitioner.

Respondent's witness, Ms. Hasselbring, completed a site-specific appraisal, selecting sales of historic (HPC) properties that were of similar size and date of construction, which she believed to be similar to the subject. Comparable sales were adjusted based on site size, views, floor area ratio, corner versus non-corner orientation, and location near the base of the ski area. Respondent also gave consideration to the subject's non-conforming lot, within the market approach.

The Board finds Petitioner's presentation of evidence in support of his asserted value to be unconvincing. The Board finds Respondent's market approach to be persuasive and sufficient to support Respondent's concluded and requested value of \$2,080,000.

ORDER

The petition is GRANTED.

Respondent is ordered to reduce the 2019 actual value of the subject property to \$2,080,000.

The Pitkin County Assessor's Office is directed to change its records accordingly.

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 8th day of September, 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

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