

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76835</b>
Petitioners:  <b>WALTER H. MARTIN and JUDY K. MARTIN,</b>  v.  Respondent:  <b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b>	
<b>AMENDED FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on June 29, 2020, Gregg Near and Samuel M. Forsyth presiding. Petitioner Walter H. Martin appeared pro se on behalf of Petitioners. Respondent was represented by Megan L. Taggart, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

**EXHIBITS AND WITNESSES**

The Board admitted into evidence Respondent’s Exhibit A. The Board admitted the testimony of appraiser Adam Ortenburger as an expert witness for the Respondent. The Board admitted the lay testimony of Walter Martin (“Petitioner”).

**DESCRIPTION OF THE SUBJECT PROPERTY**

12973 Piney Lake Road, Parker, CO  
County Schedule No.: R0105291

The subject property is a 1,947 square foot bi-level style single family residence. The original year of construction is 1973. There are 4 bedrooms and 2 baths. There is a 576 square foot attached garage. The subject property lies in the north east part of Douglas County on an approximately 1.88 acre site. The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioners, are:

CBOE’s Assigned Value:	\$ 385,000
Respondent’s Recommended Value:	\$ 385,000

Petitioners' Requested Value: \$ 314,150

### **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.

### **FINDINGS AND CONCLUSIONS**

Petitioner provided no Rule 11 evidence. Petitioner's case in chief relied on Petitioner's testimony provided at the hearing. Petitioner objected to the 22% increase represented by the CBOE value from the last reappraisal which Petitioner stated is higher than the average 6% valuation increase of the homes in a filing adjacent to the subject. Petitioner stated that

comparables from the Respondent's appraisal report are superior to the subject in so many ways that they are not comparable. He testified that a substantial increase in traffic along the subject site has a negative effect on value and has not been adequately taken into account by the Douglas County CBOE. Petitioner took exception to numerous aspects of Respondent's appraisal. Petitioner noted several aspects of the appraisal's adjustment grid, including that the location of some of the comparables are not appropriate. Petitioner testified that the large culvert on the west of the acreage has not been properly maintained. Additionally, the Petitioner did not believe that the flooding caused by the lack of a culvert on the north side of the subject has been accounted for in the value by the CBOE.

Respondent called on its expert witness, appraiser Adam Ortenburger, who testified regarding an Appraisal Report he prepared on the subject property. The appraiser testified that the Appraisal Report complies with the reporting requirements of the Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2(b). The appraiser did not inspect the subject property due to COVID 19 concerns. The appraiser identified four sales for analysis that he stated were similar to the subject. The land size of the four sales ranged from 1.72 acres to 5.06 acres and were located from .76 miles to 7.63 miles from the subject. The time-adjusted sale prices of the comparables ranged from \$527,962 to \$596,251. After adjustments the values of the comparables ranged from \$383,140 to \$570,833. The comparables were adjusted for differences from the subject including age, gross living area, basement, garage, outbuildings and site value. Comparables two, three and four were in good condition and superior to the subject. Mr. Ortenburger reconciled to the lower range of the adjusted values, to \$395,000, to account for the condition of the subject, traffic exposure, and the drainage issues raised by Petitioner. Mr. Ortenburger's value conclusion included the deduction of a \$10,000 "potential cost to cure" to account for the installation of an additional culvert. (Exhibit A, page A-26.)

The Board concludes that the Respondent's appraisal, which included adjusted comparable sales, provides the most convincing evidence as to the value of the subject property. The Petitioner provided no evidence or analysis as to how he arrived at his requested value of \$314,150. The Board finds that the Respondent has adequately addressed the salient market-based concerns of the Petitioner. Respondent provided the only comparative analysis evidence as to the impact of the attributes of the subject in the market place using market sales and making adjustments to those sales. Petitioner's argument that the subject property may have increased more in value than surrounding homes amounts to an equalization argument, which is not a proper means of evaluating the individual value of the subject property. *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997).

### **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).

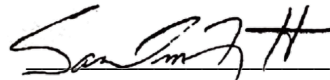
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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).

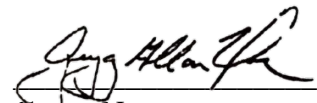
**DATED and MAILED** this 17th day of February, 2021 *npt* the 13th day of January, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

  
Samuel M. Forsyth

Concurring Board Member:

  
Gregg Near  
*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