

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 77152
Petitioner: LYNNE E M SIEGEL QUALIFIED TRUST, v. Respondent: DENVER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 6, 2021, Samuel Forsyth and John DeRungs presiding. Attorney Kenneth B. Siegel appeared on behalf of Petitioner. Respondent was represented by Paige Arrants, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

1991 E. Alameda Avenue, #12, Denver CO 81224
County Parcel #05116-10-058-000

The subject property is an 11,819-SF site improved with a single family residence just south of the Denver Country Club Golf Course. It is on a cul-de-sac directly north of Alameda Avenue. Built in 1992, this two-story home has a 3,021-SF main level and 2,142-SF upper level totaling 5,162-SF of living area. It also has a 2,226-SF basement of which 2,000 SF is finished, and a 2-car attached garage.

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

CBOE's Assigned Value: \$2,728,900
Petitioner's Requested Value: \$2,384,580

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, in this appeal, 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. (2020).

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

The Board heard detailed testimony from Lynne Siegel, trustee of Petitioner property owner Lynne E. M. Qualified Trust. Ms. Siegel objected to the categorization of her home as "mansion grade," and called into question how the County judged the quality of construction of her home. She described in detail in her testimony her cost conscious efforts in the original design

and construction of this custom home to stay on budget. The selection of materials was described as those found in chain home improvement stores and was intended to simulate more expensive finishes. For example, the home was constructed using a cheaper roof covering and synthetic stucco, instead of tile and brick, and she claimed that these components are now reaching the end of their useful life. She also had knowledge of some of the features found in Respondent's comparable sales based on in-person visits, interview or review of photographs, and testified to the ways in which they are superior overall to the subject.

Respondent presented expert testimony by Diana L. Chilcutt, employed by the Denver County Assessor's Office, who prepared a real estate appraisal of the property. She selected two comparable sales and a third that was under contract for sale within the two-year data collection period from July 1, 2016 through June 30, 2018. By applying the county supported annual time adjustment of between 4 and 5% to those comparable sales, she showed that the value of properties at this location had increased in the range of from \$306,700 to \$329,400.

Ms. Chilcutt made the most significant adjustments of from \$553,900 to \$1,648,500 for site areas that were one-half to up to twice that of the subject. Those were well supported by land sales with proximity to the golf course found in the area over the last five years.

But another adjustment of \$1,000,000, or 42%, applied to Ms. Chilcutt's Sale 1 for quality of construction was not well substantiated and appeared to be highly subjective. Ms. Chilcutt's mistaken conclusion that the property had been built to replicate an Italian Villa calls into question whether such a significant adjustment would otherwise have been made. (At hearing, Ms. Chilcutt retracted the statement in her report that the subject was "built to replicate the Italian Seafront of Villa Dei Gabbiani by Architect Peter F. Nelson.") Ms. Chilcutt also testified that she did not disagree with anything in Ms. Siegel's testimony to do with the original construction quality of the subject or deterioration of the subject residence.

Because of the similar location of Sale 1, abutting the subject to the south, there is reason to rely on its indication of value for the subject. However, absent the quality of construction adjustment, which the Board finds lacked support, it better supports Petitioner's recommended value.

The Board finds that Petitioner has met its burden of proving that the assigned value for tax year 2019 is incorrect. The Board further finds that the evidence supports a value for tax year 2019 of \$2,384,580.

ORDER

The petition is **GRANTED**. The Denver County Assessor's Office is ordered to update 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.

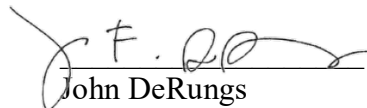
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 10th day of May, 2021.

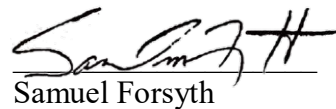
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:




John DeRungs

Concurring Board Member:


Samuel Forsyth

*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