

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: GENE LEVY v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION	
Docket No.: 77159	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on June 16, 2020. Debra Baumbach and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Assistant County Attorney Meredith P. Van Horn. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

5610 Niagra St., Commerce City
County Schedule No.: R0092233

The subject property is improved with a single family residence. The residence is a single family structure constructed in 1963. The structure is classified as fair quality; the condition is average. The residence has 936 square feet of finished living area. There are two bedrooms and one bathroom. 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:	\$ 205,000
Respondent’s Recommended Value:	\$ 205,000

Petitioner's Requested Value: \$ 131,000

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).

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 Petitioner introduced Exhibit 1, a single page document listing seven sales, proximate and similar to the subject. The sales ranged in sale price from \$132,000 to \$182,000. The

unadjusted average of the sale prices was \$163,429. Petitioner applied the time adjusted factors determined by the Adams County Assessor. The range of time adjusted sale prices was \$158,805 to \$217,581. The average time adjusted sale price was \$186,999. Petitioner's exhibit provided the year built, square footage and minimum miscellaneous comments on four of the sales. Petitioner testified that the CBOE value did not take into account location factors of the subject which have a negative impact on value. Location factors testified to by Petitioner included location on a busy arterial street, proximity to a "junk yard" next door, and industrial use properties across the street. Petitioner further testified that the condition of the subject property is no better than fair. Petitioner testified that the residence has broken windows, roof damage resulting in seasonal leaks and damaged siding.

Respondent called as an expert witness Eric Norberg, an Ad Valorem licensed appraiser. Mr. Norberg is employed by the Adams County Assessor's office. Mr. Norberg presented a Restricted Appraisal Report that he testified was in compliance with the Uniform Standards of Professional Appraisal Practice. The sole approach to value, as required by statute, was the sales comparison (market) approach. Respondent identified five comparable sales which ranged in sale price from \$200,000 to \$269,900. After adjustment for market conditions at time of sale, the time adjusted sale prices ranged from \$243,524 to \$285,419. Respondent identified the following key variables which contribute to value: BLTASCODE 1, NBDHANDEXT, time (market condition), improvement square footage, lot size, occupancy type, bathroom count, garage, unfinished basement, finished basement, covered porch, exterior construction type, quality of construction, condition of the improvement, year built, and age (which Respondent explained was actually effective age, taking into consideration any updating performed at the property and year built. Respondent testified that a "condition of improvement" adjustment is reflected in the "age" variable in the market adjustment grid. In response to a question from Petitioner about how Mr. Norberg calculated adjustments made to the comparable sales for the "condition" of the property, Mr. Norberg referred to adjustments he made in the "age" variable. Mr. Norberg did not identify location to be a unit of comparison. After questioning from the Board regarding adverse location attributes of the subject, Respondent testified that though there was no specific adjustment for location, this feature was accounted for in the reconciled value being at the lower range of the adjusted sales.

After adjustments to the time adjusted comparable sales, Respondent concluded to range of \$204,602 to \$220,957. Respondent concluded to a reconciled value of \$215,000.

Petitioner met his burden of proof, having presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board is not convinced that the Respondent's appraised value for the subject property appropriately takes into account the adverse location attributes of the subject property. Specifically, the Board finds the subject property's value is highly influenced by its fronting a busy arterial street, its sharing a property boundary with the "junk yard" next door, and its location on the perimeter of a residential use area, such that industrial use properties are located directly across the street. Further, the Board finds that at least some of the comparables offered by the Petitioner should have been used by Mr. Norberg on his adjustment grid. Taking into account the adjusted values

of the sales chosen by the Respondent and the comparables offered by the Petitioner, the Board concludes that a negative adjustment of \$10,000 for location is appropriate and should be subtracted from the lowest value of \$204,602 of the adjusted sales from Mr. Norberg's adjustment grid, resulting in a value of \$194,602 for the subject property.

ORDER

The petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$194,602. The Adams 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:



Samuel M. Forsyth



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