

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p>	<p>Docket No.: 78837</p>
<p>Petitioner:</p> <p>ROGER L. PEARSON & LONNIE J. McRAE,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	
<p align="center">FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 5, 2020, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Dylan Woods, Esq. Respondent was represented by Christopher McMichael, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioners’ Exhibits 1 through 6, noting Respondent’s objection to post base period information included in Petitioners’ Exhibit 1; and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

9921 Josephine Street, Thornton, Colorado

County Parcel No.: 0171913306036

The subject property is a one-story ranch style residence constructed in 1973 on a 9,100 square foot lot. The home has 1,070 square feet of finished living area, one bedroom, one bathroom, and an attached garage. The home does not have a basement. The County Assessor classifies the residence as fair quality in average condition. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”), the value requested by Petitioners, and the value concluded by the Board, are:

CBOE’s Assigned Value:	\$283,601
Petitioner’s Requested Value:	\$150,000
Board’s Concluded Value:	\$255,241

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 or classification 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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

FINDINGS AND CONCLUSIONS

Mr. Lonnie "Matt" McRae testified on behalf of Petitioners, claiming Respondent has not

adequately considered the poor condition of the residence. It is uncontested that the subject property was previously used for methamphetamine drug production, requiring remediation three times prior to its purchase by Petitioners. Petitioners claim the residence requires major capital improvements for foundation cracks, and numerous other building components discussed in testimony. Petitioners contend they are unable to grow grass in the backyard because of chemicals that were previously burned there. Petitioners provided photos depicting the deferred maintenance addressed in testimony that were taken in 2015 and 2020. Mr. McRae testified no improvements for those maintenance issues have been made since the 2015 photos were taken. Mr. McRae testified that Respondent's appraiser, Katherine Parson Cordova, asked to inspect the property, but because of poor relations with another Adams County appraiser, Petitioners denied access.

Mr. McRae also provided uncontroverted testimony that the residence originally had three bedrooms, but Petitioners converted it into a one-bedroom home to meet the Mr. McRae's user-specific requirements at the time, related to the need for a hospital bed. Mr. McRae argued Respondent has not adjusted the comparable sales for having more bedrooms and bathrooms than the subject.

Petitioners provided information for six sales that they claimed are better indicators of value than the sales used by Respondent.

Respondent presented expert testimony by Katherine Parson Cordova, a Colorado Certified Residential Appraiser employed by the Adams County Assessor's Office. The witness testified in relevant part that she found building permits and assessor's office notes pertaining to the subject property showing that there were numerous improvements made to the property before the January 1, 2019 assessment date. Based on this information, and without the benefit of an interior inspection, the witness concluded the condition of the subject property is average.

The three comparable sales presented by Respondent ranged in time adjusted sale price from \$289,845 to \$308,675, and all are in the same subdivision as the subject property. All of the comparable residences are the same size as the subject and were constructed in the same year, 1973. All three properties have 3 bedrooms and 1 bathroom, compared to 1 bedroom and 1 bathroom for the subject.

Respondent's witness testified that she made no adjustment for the house having previously been affected by methamphetamine drug production. The Tri-County Health Department issued a remediation certificate and Respondent had not conducted any research for the applicable base period into whether that previous contamination would affect the market value for the 2019/2020 assessment. The witness also testified she made no adjustment for the fact the subject residence has only one bedroom compared to 3 bedrooms at each of the comparable sales. In her opinion, differences in bedroom counts are included in the square footage adjustments.

The Board did find Petitioners' testimony and photos suggestive that the property could have deferred maintenance but also gives weight to Respondent's evidence that at least some of it was completed prior to the assessment date. Although taxpayers are not required to allow interior inspections of the property by the county assessor's representatives, that opportunity would be the best evidence Petitioners could have presented to Respondent (and would also have been influential evidence for the Board) to support their claim of the property's poor condition. Further,

the Board finds that Petitioners did not provide professional bids to repair or replace the items claimed to be deficient to support the lower value requested. This leaves the Board unable to determine what adjustments, if any, to make for the claimed deferred maintenance. After weighing all the evidence and noting the supporting documents provided by Ms. Cordova, the Board finds Ms. Cordova's testimony credible and her conclusion that the subject property is in average condition supported.

Regarding the previous methamphetamine contamination in the residence, the Board concludes that although it is possible there could be a market stigma and reduced market demand associated with it, no clear support one way or the other was provided by Petitioners, who have the burden of proving this stigma and its effect on market value. Therefore, the Board concludes there is insufficient evidence to support a lower value based on previous contamination that has been remediated.

As to Petitioner's sales, the Board finds that Petitioners did not make market adjustments to the sales in comparison to the subject as required by the market approach to value. Petitioners' sales include different design types than the subject, are not in the same vicinity as the subject, and all but one were reported to be invalidated sales for reasons such as, but not limited to, being between related parties. As a result, the Board does not consider the sales persuasive evidence of the subject's value.

The Board finds Ms. Cordova's value conclusion flawed by her failure to adjust for the functional deficiency created by the residence having only one bedroom. The Board finds that Ms. Cordova's appropriately selected sales are representative of the subject property's value under the market approach, based on their similarities in age, design, size, and location. However, the Board does not find it credible that Respondent's appraiser concluded no adjustment was necessary for the subject having only one bedroom. The subject residence and the comparable sales are all the same size, but all the sales have three bedrooms and superior functional utility relative to only one bedroom in the same square footage for the subject. The Board finds that a single family detached residence with only one bedroom has a functional deficiency because it significantly reduces the pool of potential buyers for that property (most buyers are seeking two or three bedroom homes), and that frequently has a negative impact on value. In fact, a one-bedroom, single family detached house is a classic example of functional deficiency, for this reason. The Board further finds that an adjustment for a house having only one bedroom is market area specific, requiring the appraiser to do more analysis than simply compare the gross living area.

Petitioner presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019 based on the lack of consideration in Respondent's analysis of the subject being a one-bedroom house. The County-assigned value was not supported by competent evidence. However, the Board is not persuaded that the value requested by Petitioners is reasonable. To account for the functional deficiency created by the subject having one bedroom, the Board estimates a ten percent downward adjustment to Respondent's value of \$283,601, resulting in an adjusted value of \$255,241.

ORDER

The petition is **GRANTED**. The Adams County Assessor is ordered to update its records to reflect a value for the subject property of **\$255,241** for tax year 2019.

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).

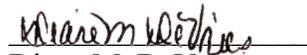
DATED and MAILED this 6th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


Louesa Maricle

Concurring Board Member:


Diane M. DeVries
*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

Yesenia Araujo