

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GENE LEVY,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 78870</p>
<p style="text-align: center;">FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 28, 2020, Gregg Near and Samuel Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2019 actual value of the subject property.

Respondent’s Exhibit A and Exhibit B were admitted into evidence by the Board. Petitioner did not dispute the qualifications of Respondent’s witness and the Board recognized Devin Patterson as an expert witness.

The subject property is described as follows:

**265 S Locust Street
Denver, CO 80224
Denver County Schedule No. 06083-25-012-000**

The improved subject property consists of a tri-level residential home containing 1,450 square feet of living area and a 2-car garage located on a 6,620 square foot lot. The home is 48 years old and is in average condition overall. The interior contains a total of 6 rooms including three bedrooms and 1.5 baths.

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:	\$577,200
Respondent’s Recommended Value:	\$565,000
Petitioner’s Requested Value:	\$380,000

Board's Concluded Value: \$565,000

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.

EVIDENCE PRESENTED BEFORE THE BOARD

Petitioner requested Respondent present their case prior to Petitioner's testimony. Respondent agreed to the request.

Respondent's witness Devin Patterson, a licensed Ad Valorem appraiser employed by the

Denver County Assessor's Office, presented a market value opinion of \$565,000 for the subject property based on the market approach. Mr. Patterson provided three comparable sales ranging in size from 1,617 to 2,079 square feet. The homes were constructed from 1955 to 1960 and were all similar in design to the subject. Adjustments were made to the comparable sales' sales prices for time (market conditions), lot size, condition, bathroom count, differences in living area, basements and garage units.

After adjustments, the comparable sales ranged in value from \$545,000 to \$600,900. Mr. Patterson considered the indicated values and reconciled to a market value opinion of \$565,000 for the subject property.

Based on the similarities of property components and the adjustments applied for each of the comparable sale properties in relation to the subject property, the Board finds that these sales are appropriately representative of the subject property's value under the market approach.

Mr. Levy requested his son, Jeremy Levy, to provide supporting testimony for his hearing. Being duly sworn, both father and son provided input in regard to the valuation of the subject property. Petitioner disputed Mr. Patterson's choice of comparable sales because they were from .29 to .53 miles from the subject. Petitioner stated the home was proximate to multi-family properties and a church that causes unreasonable competition for available parking. Petitioner contended the increased density and the nature of a more transient neighborhood population has resulted in an unpleasant summer of fireworks intruding upon peaceful use of the property. Petitioner also pointed to crime emanating from a nearby city park. In addition, Petitioner questioned Mr. Patterson's inspection of the subject for failing to consider a damaged driveway, negative drainage and needed maintenance. Petitioner provided no comparable sales for the Board's consideration.

THE BOARD'S FINDINGS AND CONCLUSIONS

After careful consideration of the exhibits and testimony, the Board finds Petitioner has failed to meet the required burden of proof. Respondent's witness provided an appraisal report detailing the factors and conclusions leading to a supportable opinion of value. The Board finds Petitioner has provided insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019.

The Board grants Respondent's request to reduce the 2019 actual value of the subject property to \$565,000, finding this value was supported by the evidence presented.

ORDER

The petition is **GRANTED**.

Respondent is ordered to reduce the 2019 actual value of the subject property to \$565,000.

The Denver County Assessor is directed to change his/her 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.

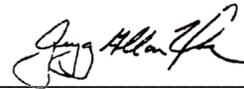
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 2nd day of February 2021.

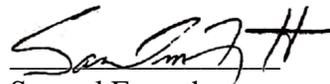
BOARD OF ASSESSMENT APPEALS

Drafting Board Member:



Gregg Near

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 decision of the Board of Assessment Appeals.

Yesenia Araujo

Yesenia Araujo

