

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78874
Petitioner: GENE LEVY, v. Respondent: DENVER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on October 29, 2020, Sondra W. Mercier and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Paige Arrants, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

Petitioner did not present written exhibits. The Board admitted into evidence Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 955 & 957 N. Inca Street, Denver, Colorado
 Denver County Parcel No.: 05036-05-025-000

The subject property is a 1,940 square foot duplex, constructed in 1890 on a 5,250 square foot lot. Each unit has two bedrooms and one bathroom. The property is in the Lincoln Park neighborhood, east of Santa Fe Drive and west of Speer Boulevard near the Denver Central Business District. The improvements are described by both parties as being in poor condition.

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE"), and the value requested by Petitioner are:

CBOE's Assigned Value:	\$567,100
Respondent's Recommended Value:	\$442,600
Petitioner's Requested Value:	\$288,800

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

The primary issue in this appeal is the condition of the improvements and whether the value should be of the improved property or land value. Petitioner claims the duplex units are uninhabitable and that multiple contractors who examined the property to bid on necessary structural repairs concluded the duplex should be demolished rather than repaired. Respondent claims the property should be valued including the duplex improvements.

Petitioner and his son, Mr. Jeremy Levy, who helps manage the subject property, provided testimony. Petitioner described the immediate vicinity around the subject property as a high-density area with a mix of old small residential properties, a veterinary clinic, used car lot, automobile garage, and other commercial buildings, most of which Petitioner testified are vacant. There is a homeless shelter nearby on Santa Fe Drive and a homeless camp across the alley from the subject property, which Petitioner claims has caused significant unsanitary conditions for the immediate vicinity as well as on the subject property. Petitioner testified the veterinary clinic has expanded recently and three buildings were torn down for a new apartment property being constructed within a block of the subject, but there have not been any new duplexes or single family homes built in the vicinity. Petitioner claims that because the duplex units are not habitable and the improvements should be torn down, the highest and best use of the property is for demolition of the improvements and redevelopment. Therefore, Petitioner claims the value of the property should be land value and requested the value allocated by the Assessor to the land for tax year 2019 of \$288,800.

The Board found the testimony of the Petitioner and his son convincing that the area has been in a declining stage and that there has been some redevelopment in the vicinity, although not yet to a high degree. The Board also is convinced by testimony of both parties that the subject duplex improvements are in poor condition. The Board takes note that Petitioner did not respond to the Assessor's office request for an interior inspection of the property, and although that is not required for an appeal, it might have affected Respondent's opinion of the degree of the poor condition. The Board finds that because of the 129-year age of the subject improvements, the poor condition, and some redevelopment in the vicinity, a reasonable future use of the subject property as a redevelopment site is supported. However, under that premise, the value of the land would not simply be the land value assigned by the Assessor as a residential duplex lot. Therefore, the Board concludes that Petitioner's requested value of \$288,800 is not supported.

Respondent presented expert testimony by Mr. LaZelle Quattlebaum, an appraiser employed by the Denver County Assessor's Office. The witness testified he made an exterior only inspection of the subject property from the property boundaries. It was his understanding the Assessor's office requested an interior inspection but received no response from Petitioner. Mr. Quattlebaum presented his appraisal, including three comparable sales ranging in year built from 1900 to 1952 and in price from \$381,530 to \$773,974. After adjustments to the sales, he concluded to a value for the subject property of \$442,600, the same as the adjusted value for Comparable Sale 1, which is closest to the subject in age. The witness testified it was his opinion the subject property

had been over valued in the mass appraisal, but the property still has value as apartments. Other old properties in the area are still used as residences, so valuing the property as land only is not reasonable. A land value for the subject might be reasonable if more redevelopment were occurring in this area but the witness did not see that in this case. Respondent recommended reducing the value assigned to the subject property to Mr. Quattlebaum's appraised value of \$442,600.

The Board is not convinced that the locations of the three comparable sales are all similar to the subject. The Board is also not convinced by the testimony of Respondent's appraiser, who acknowledged the poor condition of the subject, that age adjustments of only 15% are sufficient for Sales 2 and 3, which are 62 and 58 years newer than the subject property, respectively, and at least one of those properties has had significant renovations. Further, the Board finds no explanation or support from Respondent's appraiser that equal upward percentage adjustments made to each of the comparable sales for an enclosed porch and garages at the subject property are reasonable, in light of his testimony that the subject improvements were in poor condition. In the absence of evidence to the contrary, the Board finds the appraiser must consider whether a buyer would pay anything more for porch and garage structures that would need major repairs or replacement.

The Board concurs with Respondent's appraiser that Sale 1 is the most similar to the subject in age and is the best of the three sales analyzed. The Board is convinced the location of Sale 1 is superior to the subject location and a downward adjustment for that characteristic is reasonable, but was not made by the appraiser. Further the Board finds the upward adjustments made for the enclosed porch and garages could be lower or eliminated altogether. Therefore, the Board concludes the adjusted value of \$442,600 for Sale 1, adopted by Respondent as the appraised value for the subject property, should be lower. The adjusted price for Sale 1, excluding the upward adjustments for the porch and garages is, \$412,052. A downward adjustment for superior location is warranted and would reduce that figure more. In the absence of market evidence to adjust for location, the Board concludes to a lower rounded value for the subject property of \$400,000.

Petitioner presented sufficient probative evidence to convince the Board that the subject property was incorrectly valued for tax year 2019.

The Board concluded that the 2019 actual value of the subject property should be reduced to \$400,000.

ORDER

The petition is **GRANTED**. Respondent is ordered to reduce the 2019 actual value of the subject property to \$400,000.

The Denver County Assessor is directed to change their 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).

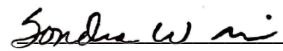
DATED and MAILED this 4th day of January, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

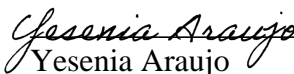

Louesa Maricle

Concurring Board Member:


Sondra W. Mercier
*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