

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78904
Petitioner: RENEE SWEET, v. Respondent: DOUGLAS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 5, 2020, Diane DeVries and John DeRungs presiding. Petitioner Renee Sweet appeared pro se. Respondent was represented by Megan Taggart, Esq. 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

3630 Collins Street Castle Rock, Colorado
County Schedule No.: R0085016

The subject property is a single family residence on 17,293 square feet in the Silver Heights subdivision, built in 1973. It has a one level ranch style design consisting of a main level of 1,440 square feet with two bedrooms and two baths and a 1,440 square foot partially finished walk-out basement.

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:	\$280,052
Petitioner's Requested Value:	\$33,918
Respondent's Requested Value:	\$250,000

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.

FINDINGS AND CONCLUSIONS

Petitioner testified on her own behalf, and presented the lay witness testimony of Jeff Buske. Petitioner objected to the assessor's classification of her home as a modular residence. She contends that its construction prior to standards adopted in 1976 makes it a mobile home (and personal property) under state law. Petitioner presented no comparable sales, but presented the Douglas County Assessor's valuation of other properties that she stated were similar to the subject. Petitioner testified that the subject suffers from the influences of noise, light, and proximity to commercial activity and the highway. Petitioner also believed that to correct foundation defects and abate the presence of asbestos would cost nearly \$140,000 based on contractor estimates she provided. That figure was deducted from her estimate of the \$165,200 value of the subject (valued separately by Petitioner as the home, land and a utility tap's value) to reach the requested value of \$33,918 (although the Board did not fully understand how Petitioner calculated this figure). *See* Petitioner's Exhibit 1, p. 10.

Respondent presented the expert testimony of Peggy Kruml, employed as a residential appraiser by the Douglas County Assessor's Office, who testified in relevant part that she completed an appraisal of the subject property for tax year 2019 using the market approach. A range of adjusted sales prices from \$224,648 to \$377,476 was established using five comparable sales. Absent what she referred to as "relevant data to support a condition adjustment", she gave most weight to her adjusted Sale 3. Sale 3 was described as in need of major rehabilitation and had an inferior location "backing" to Interstate Highway 25. It was at the lower limit of the indicated value range, and \$100,000 to \$150,000 less than what the remaining four adjusted sales prices indicated.

Petitioner presented no market evidence to show any value difference in properties improved with mobile homes vs. modular homes. Therefore, it was not shown that the classification of the residential improvement as a mobile home rather than modular home would have any impact on the valuation of the subject property. In addition, both types of homes are considered taxable real property and residential improvements.

In support of her argument that the subject residence should be classified as a mobile home, Petitioner pointed to the definitions contained in statute at §§ 24-32-3302 (10)-(12), (24), and (25), C.R.S, and 8 CCR 1302-14. However, the applicability of these definitions to the issues in this proceeding was not clear. A mobile home is defined by statute as "a manufactured home built prior to the adoption of the 'National Manufactured Housing Construction and Safety Standards Act of 1974', 42 U.S.C. sec. 5401 et seq., as amended." § 39-1-102(8), C.R.S. A modular home is defined as any preconstructed factory-built building that is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S; is not constructed in compliance with the National Housing Construction and Safety Standards Act of 1974; and is constructed in compliance with building codes adopted by the division of the housing. § 39-1-102(8.3), C.R.S. The Assessors' Reference Library, which is binding guidance for county assessors, also cites these statutory definitions. 2 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 3, at 3.6 (rev. Jan. 2021).

Ms. Kruml was knowledgeable regarding the difference between mobile homes and modular homes. She found no indication the subject residence is a mobile home. Ms. Kruml reviewed records of the sale of the subject, and learned through an MLS listing that it is “frame construction.” Ms. Kruml also found evidence that the subject residence received financing through the FHA as a modular home, and because the FHA will not finance a mobile home older than 1976, so considered this evidence that the subject residence could not be a mobile home. The Board finds Ms. Kruml’s this to be persuasive evidence that the subject residence is properly considered a modular home. The Board also notes the lack of evidence that the subject is on a “temporary foundation,” as is typical of a mobile home. *See* 2 Div. of Prop. Taxation, Dep’t of Local Affairs, Assessors’ Reference Library Ch. 3, at 3.6 (rev. Jan. 2021).

The Board finds Petitioner’s requested value at \$33,918 is unreasonably low. Certainly, the subject’s value could not be less than what she has argued that the land and a utility tap alone are said to be worth, at almost \$120,000.

Petitioner’s comparison of the subject’s assigned value to other properties’ assigned value in support of her request for a lowered value is an equalization argument. Once the actual value of the subject property has been determined, the Board can then consider an equalization argument if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were derived by application of the market approach and that each comparable was correctly valued. *See* § 39-8-108(5)(b), C.R.S (“The assessor's valuation of similar property similarly situated shall be credible evidence.”) However, there was no evidence or testimony presented which showed the Board that the assigned value of the equalization comparables were derived by application of the appropriate approaches to value and that the comparable was correctly valued. As a result, the Board can give no weight to the equalization argument presented by Petitioner. *See Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 17-18 (Colo. 1997) (“equalization is not a proper means of evaluating the value of a property’s specific improvements.”)

The Board finds Ms. Kruml’s appraised value properly took account of the condition of the subject property (she considered it “below average”), and is persuasive evidence that the assessor’s value is correct. The Board finds that any anticipated costs to restore the property have been accounted for in the assessor’s value through Ms. Kruml’s selection of comparable sales. The Board was convinced by the testimony of Ms. Kruml properly accounted for the negative influences discussed by Petitioner, including noise, light, and proximity to commercial activity and the highway.

The Board finds Petitioner has not met her burden of proving that the assigned value for tax year 2019 is incorrect. The Board finds the County’s requested value of \$250,000 was well supported by Ms. Kruml’s testimony and appraisal report.

ORDER

The petition is **GRANTED**, due to the Board’s adoption of Douglas County’s recommended value of \$250,000. The Douglas 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.

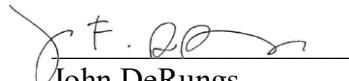
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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 30th day of March, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


John DeRungs

Concurring Board Member:


Diane 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

