

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78967
Petitioner: ROBERT FLEAK, v. Respondent: DOUGLAS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 19, 2021, Diane DeVries and Valerie Bartell presiding. Petitioner Robert Fleak appeared pro se. Respondent was represented by Carmen N. Jackson-Brown, Senior Assistant County Attorney for Douglas County. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1 through 7. The Board also admitted into evidence Respondent’s Exhibits A and B.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 9829 Falcon Lane, Littleton, CO 80125
County Schedule No.: R0430098

The subject property is a single-family residential property. The appealed value assigned by the County Board of Equalization (“CBOE”) below, the parties’ assertions of the subject property’s value, and the Board of Assessment Appeals’ concluded value are as follows:

Appealed CBOE Value:	\$ 401,526
Petitioner’s Requested Value:	\$ 360,000
Respondent’s Requested Value:	\$ 401,526
Board’s Concluded Value:	\$ 401,526

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.*

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 subject property is a single-family residential property located in Douglas County, Colorado. Petitioner provided testimony stating that the value assigned by the county is incorrect.

Petitioner stated that Respondent did not consider a badly damaged roof when concluding the subject property's value. Petitioner also testified a value of \$360,000 was more accurate, when considering two comparable sales in the base period, presented in Exhibit 5. Petitioner advised it was most relevant to consider comparable sales occurring most proximate to the subject, and by the same builder (Centex), as homes in the south portion of the neighborhood are done by a custom builder, and are superior to the subject. Petitioner provided a map of sales in Exhibit 1 to illustrate this, which included some property addresses; though these comparable sales did not include any sale dates or sale prices. Petitioner's Exhibit 4 provided a rebuttal to the Respondent's Exhibit A Appraisal Adjustment Grid, calling into question adjustments to Respondent's sales 1 and 3 for superior location (near a lake). Lastly, Petitioner testified his requested value of \$360,000 represented a 12 percent increase in value over the assessed value in the prior tax year, 2018.

Respondent provided Exhibit A, an appraisal of the subject property. The appraisal report was authored by Rebecca Dockery, an appraiser with the Douglas County Assessor's Office who testified in support of her report. The appraisal provided five comparable sales and concluded to a value of \$435,000. The Respondent did not request a value of \$435,000, and instead requested a value of \$401,526. Ms. Dockery testified that all five comparable sales were constructed by the same builder as the subject. Ms. Dockery also testified that the two comparable sales presented by the Petitioner were considered, but not used, as one is a different style, with no basement, and the other does have a basement, but sold outside of the base period. (However, according to Petitioner's Exhibit 7, the sale occurred February 15, 2017.) Respondent also provided Rebuttal Exhibit B, which included the Building Inspection Report, showing that the roof replacement passed inspection April 20, 2018, along with aerial photos taken in 2017 and 2019 showing the change in shingle color to the roof of the subject.

The Board had several issues at hand to consider in determining if Petitioner had met the burden of proof of showing that the Assessor's value was incorrect. First, was whether the roof condition impacted the subject's value. The Board determined that Respondent correctly considered the roof's condition. The roof was completed at some point in early 2018, as evidenced by the inspection report dated April 20, 2018. As the case is for consideration of the value for tax year 2019, the Board must consider the condition of the property as of January 1, 2019, at which time the roof condition was new. The Board therefore concludes no reduction in the property's value was warranted due to the roof's condition.

Next, the Board must consider if the comparable sales used by Respondent to determine the subject property's value were the most appropriate. The Petitioner provided two sales, one with a different floor plan than the subject, lacking a basement. The second sale – 7737 Brown Bear – Respondent argued, occurred outside of the base period. However, because the data gathering period is the 18 months from January 1, 2017 to June 30, 2018 for tax year 2019, the second sale does appear to be within the data gathering period. *See* § 39-1-104(10.2)(d), C.R.S. Furthermore, the photography provided in Exhibit 7 seems to indicate the sale has a similar floor plan to the subject. The property sold for \$380,872 on February 15, 2017. Petitioner stated the property appears to be superior to the subject, based upon finished basement area, and a slightly larger above grade floor area. Petitioner offered an adjusted value of this comparable sale of \$372,472. While one sale does not constitute a value for the subject, this information was weighted by the Board in the final analysis to follow.

The Board also considered the five sales provided by Respondent in its appraisal. Ms. Dockery testified that the residences at all five sales were constructed by the same builder as the subject, which the Board considered to be relevant, especially in light of the argument brought forth by Petitioner that there are superior custom homes in the southern portion of the subject neighborhood. There was disagreement between Petitioner and Respondent regarding the site value. Ms. Dockery testified the subject backs to a greenbelt, generally a positive locational attribute. All five comparable sales in Ms. Dockery's appraisal had upward adjustments, even with comparable sales which had larger sized lots. Ms. Dockery testified that the locational feature of backing to a greenbelt was determined to be more valuable than the size of the lot, which was the rationale for the upward adjustment on comparable sales, despite their larger site areas.

The Board considered whether the concluded value would have been affected had Ms. Dockery considered the site value for sales 1 and 3 to be superior to the subject (based on a lake view, or partial lake view). Ms. Dockery's Sale 4 provided the most insight into a potential adjustment based on this argument. Sale 4 is a property with a site area of inferior size to the subject, as well as inferior location proximate to high tension power lines. Sale 4 had an upward adjustment of \$13,952. The Board applied a similar adjustment to sales 1 and 3 as a test of sensitivity of the site adjustment to the overall concluded value. The Board also considered Petitioner's requested inclusion of the sale at 7737 Brown Bear with Petitioner's adjusted value of \$372,472. Consideration of all these arguments led to a median adjusted value of \$424,174 and a mean adjusted value of \$415,599, well in excess of Respondent's requested (and CBOE-assigned) value of \$401,526. Therefore, the Board determined that while some of Petitioner's arguments did have some merit, said arguments would not lead to a concluded value lower than the Assessor's concluded value. As a result, the Board finds that Petitioner has failed to meet his burden of showing that the County's assigned value is incorrect.

ORDER

The petition is **DENIED**.

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 26th day of August, 2021.

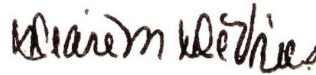
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie C. Bartell

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.



Stephanie Hinojos