

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78969
Petitioner: ROBERT WALBY, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on December 11, 2020, Louesa Maricle and Amy J. Williams presiding. Petitioner appeared pro se. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 2388 S. Loveland Way, Lakewood, CO 80228
County Schedule No.: 300456511

The subject property is a two-story, single family residence constructed in 2011. The residence is 2,474 square feet with a 1,307 square foot walkout basement of which 816 square feet is finished. The home is located on a 0.325 acre lot in Solterra Subdivision, Filing No. 6. 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:	\$ 788,526
Respondent’s Recommended Value:	\$ 770,500
Petitioner’s Requested Value:	\$ 715,000
Board’s Concluded Value:	\$ 770,500

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

Petitioner did not provide comparable sales data. Petitioner offered testimony regarding the subject property characteristics relative to the sales utilized in Respondent's appraisal identified as Exhibit A. In particular, Petitioner opined that his view was not a "good view" as identified in the adjustment grid on Page 18 of Exhibit A. Petitioner also argued that the Assessor increased the subject property's total assessed value for the 2019 tax year by an unsupportable amount, as compared to similar neighboring properties.

The four comparable sales presented by Respondent range in time adjusted sale price from \$749,719 to \$831,872. All of the comparable sales had 2,474 square feet of above grade living area, with walkout basements ranging from 1,078 square feet to 1,307 square feet. All of the walkout basements included finished area except No. 4. All of the comparable sales were extremely similar, located in the same subdivision, of similar size and only a few years apart in age. Additionally, all of the sales occurred between May and November of 2017.

Respondent presented expert testimony by Patty Jo White, Appraiser, employed by the Jefferson County Assessor's Office, who testified in relevant part that sales were selected based upon the subject's model home type, identified as Vivaldi, and sold within the statutorily defined data collection time period. Vivaldi model home sales were further refined to include those closest in proximity to the subject.

Based on the similarities between each of these comparable sale properties and the subject property, the Board finds that these sales are appropriately representative of the subject property's value under the market approach, with the exception of Sale No. 2. Analysis of sale price per square foot indicates Sale No. 2 is an outlier. Sale Nos. 1, 3 and 4 have time adjusted dollar per square foot sale prices of \$304.20, \$307.94 and \$303.04, respectively. Sale No. 2 has a time adjusted dollar per square foot sale price of \$336.25. Ms. White's testimony, when questioned about Sale No. 2's higher sale price but very similar physical characteristics relative to the other three sales, did not provide clarification or reasoning for the roughly \$30 per square foot difference in sale price. However, even if Sale No. 2 is eliminated from consideration within the adjustment grid, the Respondent's concluded, and requested, value of \$770,500 falls within the value range indicated by the remaining three sales. Overall, considering the data and analysis contained within Respondent's appraisal report, the Board places more weight on the evidence of Respondent than on the testimony of Petitioner.

Petitioner advanced an equalization argument (comparing the subject's assigned value to other properties' assigned value) in support of his request for a lowered value. 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. In fact, Petitioner stated he was relying on mass appraisal

valuations of the equalization comparables. 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.”)

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has failed to meet his burden of proving that the assigned value for tax year 2019 is incorrect. However, the Board finds that Respondent presented sufficient evidence to support its recommended value, and on that basis finds the previously assigned CBOE value is incorrect.

ORDER

The petition is **GRANTED**, based on Respondent’s recommendation of a reduction in value to \$770,500. The Jefferson County Assessor 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 19th day of March, 2021.

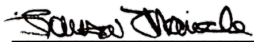
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Amy J. Williams

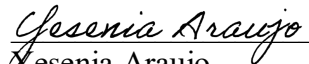
Concurring Board Member:



Louesa Maricle
*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.



Gesenia Araujo