

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>RICHARD M. SMITH TRUST and JOAN Y. SMITH TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 78976</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 25, 2021, Amy Williams and Sondra Mercier presiding. Petitioners Joan Y. Smith, trustee of the Joan Y. Smith Trust, and Richard M. Smith, trustee of the Richard M. Smith trust, appeared pro se. Respondent was represented by Olivia Lucas, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioners’ Exhibit 1. The Board admitted Respondent’s Exhibit A. The Board admitted David Martinez, Ad Valorem Appraiser with the Boulder County Assessor’s Office as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

**1124 Quince Avenue, Boulder
Boulder County Schedule No. R0110588**

The subject is a 2,398-square foot single family residence situated on a 7,160-square foot residential lot. The residence was constructed in 1994 and underwent partial remodeling in 2015.

The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by each party, are:

CBOE’s Assigned Value:	\$1,238,900
Respondent’s Recommended Value:	\$1,238,900
Petitioner’s Requested Value:	\$1,100,000

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 (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 Commission*, 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 the BAA, 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 Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, a 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 board of equalization proceeding may be presented to the 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.

FINDINGS AND CONCLUSIONS

Petitioners contend that Respondent has not given adequate consideration to the condition of the residence as of the date of value. Petitioner, Joan Smith, testified that the residence sustained significant damage during the 2013 flood, which they were not aware of when they purchased the home in 2015. Petitioners provided current and historical photographs of the subject that depicted damages to cabinets, decking, and flooring. Photos indicated that some items had been replaced, repaired, or upgraded prior to the January 1, 2019 assessment date. However, Ms. Smith testified that deferred maintenance remained and that the basement area of the home was not habitable as of the assessment date.

Petitioners submitted five sales for consideration; however, several transacted beyond the statutory base period, and minimal information was provided regarding the sales. (EXH. 1, pgs. 29-30.) Petitioners also submitted interior photos of Respondent's sales. (EXH. 1, pgs. 31-51.)

Finally, Petitioners submitted a list of 12 homes located in their homeowner's association that were of similar age, but varied by size and other characteristics, noting that their assigned values were all below that of the subject. (EXH. 1, pgs. 52-53.)

Respondent's witness completed a site-specific appraisal of the subject property, comparing sales of similar properties and adjusting for time and a variety of characteristics. Assuming that the interior was of the same condition as the exterior, and without benefit of interior inspection, Mr. Martinez concluded that no adjustment was required for condition.

Based on the photographs and testimony presented by Petitioners, the Board was convinced that an adjustment for condition was warranted to Respondent's comparable sales. Respondent's sale 3 is located two doors from the subject. It is of similar age and photos of that sale were found most comparable to the subject. Eliminating Respondent's adjustment for effective year built, sale 3 would indicate a value of \$1,186,040. The Board finds that Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019, and that the correct value is \$1,186,000.

Equalization, which is the act of raising or lowering the total valuation placed on a class or subclass of property within a designated territorial limit, does not account for the specific attributes of individual properties and, thus, is not a proper valuation method for an individual, residential property. However, the assessor's valuation of similar property similarly situated may be considered to be credible evidence, admissible to assist the Board in deciding issues before it. § 39-8-108(5)(b), C.R.S. The Board can consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market approach, and if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were correctly valued, by application of the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997). Despite the lower value determination of the Board, the subject would remain the highest valued property presented; however, there was no supporting evidence for further adjustment.

ORDER

The petition is **GRANTED**. The Board finds that Petitioners have met their burden of proving that the 2019 taxable value of the property is incorrect. Respondent is ordered to reduce the 2019 actual value of the subject property to \$1,186,000.

The Boulder 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.

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 18th day of May, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Sondra W. Mercier

Concurring Board Member:



Amy Williams

*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.



Casie Stokes