

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p>	<p><b>Docket No.: 78984</b></p>
<p>Petitioner:</p> <p><b>RONALD J. FEDERICO,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b></p>	
<p align="center"><b>FINAL AGENCY ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on December 11, 2020, Amy J. Williams and Louesa Maricle 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: 7364 Heiter Hill Road, Evergreen, Colorado  
Jefferson County Account No.: 30008645

The subject property is a two-story single family residence on a 1.571-acre lot in the residential subdivision commonly known as Marschner 5th Filing, approximately four miles west of Evergreen Memorial Park near North Turkey Creek Road. The house has 1,465 finished square feet above grade and a 915 square foot unfinished walk-out basement. The residence has two bedrooms, one full bathroom, and a half bathroom. It does not have a garage. The residence was built in 1975 and is classified by the Jefferson County Assessor’s office as average quality construction. 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:	\$402,729
Petitioner’s Requested Value:	\$385,359

Board's Concluded Value: \$402,729

### **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 claims Respondent did not adequately consider the inferior condition factors affecting the subject property and did not properly adjust for the comparable sales' superior features. Petitioner testified that the subject has dirt road access that is inferior to the paved road access for the comparables; the house has a composition material exterior siding that is inferior to higher quality siding materials used for the comparable sales; the subject has a propane gas tank for heat compared to natural gas service for the comparables and it does not have air conditioning; the subject basement has a dirt floor and is completely unfinished; the interior of the home has had only minor updating; and the comparable sales have other superior features and some are in more renovated condition. The master bathroom in the residence has been remodeled. Petitioner testified Respondent's Sale 2 is in a superior location and has several superior features compared to the subject property but they were not adequately reflected in the adjustment grid. Petitioner further testified he submitted information for three sales he believes are more comparable to his residence but neither Respondent nor the BAA received that sale information. Although the Petition document cites three sales along with sale dates and prices, the Board concludes there is insufficient information provided to analyze further for this hearing. The Board does find Petitioner's testimony credible regarding the quality and condition of the property.

Respondent presented expert testimony by Renee Nelson, a Colorado licensed Ad Valorem Appraiser employed by the Jefferson County Assessor's Office, who testified about her appraisal analysis for the subject property. The witness presented four comparable sales ranging in unadjusted sale price from \$437,000 to \$576,000, and in size from 1,008 to 1,479 above grade square feet. The witness testified the subject property is of average quality construction without much ornamentation and has stock grade cabinets, doors, hardware, fixtures, and other finishes. The witness testified she gave most weight to Sale 2 in her conclusion of value for the subject because it has original cabinets, laminate countertops, and most other finishes. The witness concluded to a market value for the subject property of \$464,000.

The Board finds that Ms. Nelson's summary appraisal report does not provide adequate information for the Board to understand or have confidence in some of the adjustments to the sales. The Board finds that the propane gas fueled heat for the subject property is a basic quality heat type but all four sales are adjusted upward as being inferior to the subject without any explanation to support that conclusion. The witness does not clearly address any superior or inferior location differences there might be relative to the subject property. Also, the distance from the subject is not given for Sale 3. If location is considered in the "Land contributors" or "Distance" line items in the adjustment grid, it is not clear to the Board. Further, the reasons for the upward "Land contributors" adjustments the witness made to each sale are either not well defined or not defined at all. Therefore, the Board is not convinced the upward adjustments made to all four sales for "Land contributors" are justified. Regarding Sale 3, the Board notes that the narrative description of adjustments states that both upward and downward adjustments for design were made by the witness, which is likely an error. The witness testified that Sale 4 has had many upgrades but despite upgrading the effective age of that property from 1972 to 1990, the witness made a \$25,300 upward adjustment to that sale for remodeling, indicating that it is inferior to the subject. Based on the testimony, the Board understands the condition of Sale 4 to be superior to the subject and would expect a downward adjustment for condition. The Board finds that the comments on the

comparable sales in the report simply restate the list of upward and downward adjustments made to each sale but give no reasoning or other support.

Ms. Nelson testified she gave most weight to Sale 2 because, like the subject, it has many original finishes. Even so, the Board finds that Ms. Nelson's value conclusion is a straight average of all four sales. The Board finds that Sale 2 has the highest adjusted price of all the sales and it is over \$97,700 higher than the adjusted value for Sale 1, which is shown as having superior quality than both Sale 2 and the subject. Also, Sale 2 has a smaller gross living area than both Sale 1 and the subject. The Board finds it inconsistent that Sale 2 with average quality, mostly original finishes, and a smaller gross living area should sell for a much higher adjusted price than Sale 1. The Board questions whether there are other unknown factors that affected the higher price for Sale 2 that have not been addressed, including, but not limited to actual condition or location. The Board concludes that further analysis of the adjustments made to the four comparable sales would result in lower indications of value for each. The Board concludes that Ms. Nelson's appraisal report does not support a credible conclusion of market value for the subject property.

The Board places more weight on the testimony provided by Petitioner regarding the physical aspects and condition of the subject improvements than on the evidence provided by Respondent during the hearing. However, Petitioner did not provide sufficient evidence of sales he considered more similar to the subject property than those provided by Respondent. For that reason, the Board concludes there is insufficient evidence to support Petitioner's requested value of \$385,359. Although the Board concludes that the market value for the subject property should be lower than the \$464,000 indicated by Respondent's appraisal, insufficient information was provided to convince the Board that a value lower than the \$402,729 assigned value is supported.

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has not met his burden of proving that the assigned value for tax year 2019 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 6<sup>th</sup> day of April, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

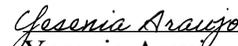


  
Louesa Maricle

Concurring Board Member:

  
Amy J. 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 order of the Board of Assessment Appeals.

  
Yesenia Araujo