

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79059
Petitioner: TUFO HENRY M III REVOC TRUST, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 22, 2021, Louesa Maricle and Sondra W. Mercier presiding. Henry Tufo, trustee of the Henry M. Tufo III Revocable Trust, represented Petitioner. Respondent was represented by Olivia D. Lucas, Esq. Petitioner appeals the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits A-C and Respondent’s Exhibit A. David Arthur Martinez, Ad Valorem Appraiser with the Boulder County Assessor’s Office was admitted as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 456 Mapleton Avenue, Boulder
County Schedule No.: R0004251

The subject property is a 2,504-square foot, single-family residence situated on a 10,824-square foot lot. The residence was constructed in 1940 and renovated in 1993. (Respondent’s Exhibit A, pg. 4.)

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:	\$ 1,563,000
Petitioner's Requested Value:	\$ 1,250,000
Respondent's Requested Value:	\$ 1,563,000
BAA's Concluded Value:	\$ 1,563,000

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 or county board'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 proceeding below 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

Petitioner, Henry Tufo, contended that the subject suffers from significant deferred maintenance. He reported that substantial repairs were needed to exterior components including roof, siding, and windows, which he believed were obvious from the street on an exterior inspection. Mr. Tufo provided no cost estimates or detail concerning deferred maintenance issues.

Petitioner provided an independent appraisal (Petitioner's Exhibit C) which was completed for lending purposes with a date of value of November 11, 2020; however, the statutorily required valuation date is June 30, 2018, for tax year 2019 valuations. The appraisal relied on five sales that occurred beyond the end of the statutory base period of June 30, 2018. Finally, the appraiser who completed the report, William Troy Mousel, was not presented as a witness, denying the opportunity for cross-examination. For these reasons, the Board can give no consideration to the valuation presented in Petitioner's appraisal. The Board finds that Petitioner's evidence is relevant only to identify property characteristics and condition.

Petitioner testified that neighborhood sales that he believed were most comparable were of properties that had been razed subsequent to sale and redeveloped. However, Petitioner provided no data or sales from within the statutory base period to support this contention.

Mr. Martinez prepared a site-specific appraisal indicating a value for the subject of \$1,850,000. He conducted an exterior inspection, but no interior inspection. Sales were adjusted for market trends and a variety of property characteristics. The five comparable sales presented by Respondent indicated an adjusted value range of \$1,596,475 to \$2,752,060, in excess of the assigned value for tax year 2019. (Respondent's Exhibit A, pgs. 17-18.)

Both the quality and condition of the subject were rated average by Mr. Martinez. Mr. Martinez testified that the quality rating of a property reflects the quality of its original construction (its "bones") and is not likely to change over time. He further clarified that the practice of the Boulder Assessor's Office is to consider deferred maintenance within the condition rating – not the quality rating – for a property. All five sales received a sizable downward adjustment for their superior quality. Mr. Martinez testified that he recognized from his exterior inspection that the subject had deferred maintenance, but he made no specific condition adjustment to his sales to account for an inferior interior or exterior condition of the subject, because he was not able to inspect the subject's interior. His appraisal report includes the statement that it "was carried out under the extraordinary assumption that the condition of the property was substantially similar to its condition on the exterior observation from the street." (Respondent's Exhibit A, pg. 13.) However, he also stated under cross-examination that he had no particular reason to doubt the authenticity of the pictures provided by Petitioner showing the condition of the interior of the subject. He indicated that he would rely on an interior inspection and contractor's estimates to make further adjustments for condition.

The Board was convinced that insufficient consideration had been given to the subject's condition based on photographs presented by Petitioner, and Mr. Martinez's testimony that he in fact saw evidence of deferred maintenance from exterior inspection. However, the Board finds that even accounting for the possibility that the County should have assigned a lower rating to the

subject’s condition, and should have adjusted its comparable sales values downward to account for their superior condition, the County-assigned value still appears to be correct.

Mr. Martinez testified that lowering the condition of a property from “good” to “average” condition would result in approximately a 5% to 7% downward adjustment, while comparing “average” to the next step lower of a “moderate” condition would result in a 7% to 10% downward adjustment. Applying even the highest suggested adjustment of 10% to the time adjusted selling prices of Mr. Martinez’s comparable sales produced the following range:

Sale No.	1	2	3	4	5
Respondent’s Adjusted Value	\$1,596,475	\$2,176,689	\$2,151,090	\$2,048,970	\$2,752,060
Adjusted Value with 10% Additional Condition Adjustment	\$1,437,164	\$1,955,434	\$1,925,090	\$1,842,884	\$2,467,060

After Board adjustment, only Sale 1 suggests a value below the CBOE assigned value. While Sale 1 is located closest to the subject, it transacted prior to the 18-month base period and should be considered along with equally relevant sales that occurred within the final months of the base period. The Board places equal weight on all five sales and concludes that the 2019 assigned value was supported by Respondent’s sales.

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 its 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 17th day of June 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Sondra W. Mercier

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.


Casie Stokes