

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 79732</b>
Petitioner:  <b>JULIANNE MCCABE,</b>  v.  Respondent:  <b>BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on March 10, 2021, Diane M. DeVries and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Michael A. Koertje, Esq. Petitioner appeals the actual value of the subject property for tax year 2019 and requests an abatement or refund.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibit 1 and Rebuttal 2, and Respondent’s Exhibit A.

**DESCRIPTION OF THE SUBJECT PROPERTY**

Address: 532 Arapahoe Avenue A, Boulder, Colorado  
County Account No.: R0006914

On January 1, 2019, the subject property was improved with an 850 square foot, one-story, one-bedroom/one-bathroom residence. There was also a detached garage with a 350 square foot studio above the garage. The improvements were built in 1936 on a 6,583 square foot lot. The County Assessor had assigned an effective year built of 1970 and rated the condition of the improvements as average.

The appealed value assigned by the Board of County Commissioners (“BOCC”), the parties’ assertions of the subject property’s value, and the Board of Assessment Appeals’ concluded value are as follows:

Appealed BOCC Value:	\$865,100
Petitioner’s Requested Value:	\$724,700
Respondent’s Requested Value:	\$865,100
BAA’s Concluded Value:	\$750,000

### **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 CBOE’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, in this case, the Board may not impose a valuation on the property in excess of that set by the BOCC. § 39-8-108(5)(a), C.R.S. (2020).

### **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 primary issue in this appeal is the condition of the improvements and whether the value should be of the improved property or land value. Petitioner claimed her demolition application was approved by Boulder's Landmark Commission on August 1, 2018 but the demolition permits were not issued until January 2019, after the January 1, 2019 assessment date. Some interior demolition had been done prior to the assessment date rendering the residence uninhabitable, including removal of appliances, some sheetrock, and insulation; utilities had been shut off, and the sewer line abandoned. The property had no heat and the studio space above the garage also was not habitable. Petitioner testified the tax year 2020 Notice of Valuation for the subject property, after demolition but before construction of a new single family home, was \$724,700. Petitioner claimed that at all pertinent times in 2019, the subject property was in the same condition as when the 2020 valuation occurred. Therefore, Petitioner claimed the 2019 taxes should be abated to the 2020 valuation of \$724,700.

Respondent claimed the property was valued for the appraisal presented at hearing both as improved and as if vacant; both values were higher than the assigned value. Respondent further claimed the improvements still existed on the January 1, 2019 assessment date so did not reflect the same condition as on the January 1, 2020 assessment date when the improvements had been demolished. Therefore, Respondent argued, the assessed values for tax years 2019 and 2020 would not be the same.

The Board finds Petitioner's testimony credible evidence that the residential improvements were not in habitable condition as of the 2019 assessment date. By that date the Boulder Landmark Commission had issued permission for the improvements to be demolished, even though the demolition permit was issued in January 2019 after the January 1, 2019 assessment date. The Board further finds that the improvements were then demolished for construction of a new residence. The Board also considered the testimony of Respondent's appraiser witness that the photographs included in his appraisal were taken approximately 10 months before the assessment date and he did not re-inspect the home for the 2019 assessment. However, the Board rejects Petitioner's claim that the property was at all pertinent times in 2019 in the same condition as when the 2020 valuation occurred, so the 2019 taxes should be abated to the 2020 valuation. The Board finds the improvements were demolished after the 2019 assessment date, but before the 2020 assessment date. Petitioner did not present market sales of either improved residential properties planned for redevelopment or vacant residential sites.

Respondent presented an appraisal of the subject property including a market value as improved, with the following caveat:

The appraisal was carried out under the extraordinary assumption that the condition of the subject property on the January 1st, 2019 assessment date was substantially similar to its condition on the inspection date of February 12th, 2018. If this assumption were to be found untrue, it could affect the appraiser's opinions and conclusions.

*Respondent's Exhibit A, p. 15.*

Respondent presented expert testimony by Mr. David Arthur Martinez, a State Licensed Ad Valorem Appraiser employed by the Boulder County Assessor's Office. The witness testified in relevant part that he had made a personal inspection of the subject property on February 12, 2018 but did not re-inspect the property for the 2019 assessment date. In response to questioning from the Board, Mr. Martinez testified that to his knowledge, the residence was in habitable condition; he did not find a demolition permit issued prior to the 2019 assessment date so believed demolition had not been started. The witness testified if better information had been available regarding the interior condition, he would have considered making a downward adjustment that might have affected the value conclusion for the subject property.

Based on the testimony of Petitioner and Mr. Martinez, and the extraordinary assumption made by Mr. Martinez relative to the valuation analysis of the subject property as improved, the Board concludes that the condition of the improvements had changed between February 12, 2018 when Mr. Martinez inspected the interior and January 1, 2019. The Board concludes that Respondent's appraisal of the improved subject property as a habitable residence does not result in a credible conclusion of market value as of the assessment date. Therefore, Respondent's valuation analysis of the property as improved is not considered further in this case.

Mr. Martinez also presented a brief comparable sales analysis in his appraisal of three residential lot sales in a sales adjustment grid. The three land sales presented range in unadjusted price from \$540,000 to \$1,200,000, and the lot sizes range from 6,251 to 7,138 square feet. After adjustments for changing market conditions and consideration of adjustments for physical characteristics, the value indications range from \$659,616 to \$1,252,439 and from \$92.41 to \$200.36 per square foot. Mr. Martinez concluded to a land value for the subject property of \$140.00 per square foot and a total value as vacant land of \$921,620.

The Board finds the three vacant lot sales are all reasonably similar to the subject lot in size. All were vacant development lots compared to the subject which had completed the Landmark Commission process but still required demolition of the old improvements. The Board finds the three sales have an unusually wide range in values with the time trended price of the highest sale price paid for Sale 2 being more than double the price of the lowest comparable, Sale 3. The Board finds no other adjustments than for time trending (changing market conditions) were made to Sales 1 and 2, the highest of the three sales, but an upward adjustment for inferior location relative to the subject property was made to Sale 3, the sale with the lowest price. Even after Mr. Martinez made market adjustments, Sale 2, the highest sale, is still approximately 90% higher than

Sale 3, the lowest sale. Sale 2 also is 28% higher than Sale 1 and 45% higher than the \$865,100 value assigned by the BOCC. The Board finds that analysis highlights the imperfect nature of the land sale market and raises questions about the adequacy of the adjustments made to the three sales.

The Board finds Mr. Martinez did not consider downward adjustments for the cost to demolish the subject improvements that were still present as of the assessment date in his appraisal. The parties did not provide evidence of the demolition costs, but the Board concludes that a knowledgeable buyer would be willing to pay less for the subject site than for a comparable vacant site because of the time and cost associated with demolition. Therefore, the Board concludes the value of the subject property would be lower than both the land value assigned by the BOCC and the value conclusion presented by Respondent's witness, under the premise that the improvements no longer contributed significant value to the property as of the assessment date.

In considering a reasonable market value for the subject property, the Board has relied on the residential lot sales presented by Respondent, the only land sales presented. In concluding to a value for the subject property, the Board gives little weight to Sale 2 because it is so much higher than the other two sales, with no support given to justify it. In order of lowest to highest price, the indicated values for Sale 3 and Sale 1 are \$659,616 and \$978,469, respectively. Because those sales are of vacant lots ready for residential development, the Board concludes that downward adjustments to each would be justified for the cost and time associated with the demolition of the subject improvements.

Although the 2020 tax year assigned value of \$724,700 is not a subject of this appeal, the Board has considered it as an additional indication of Respondent's opinion of value for the property as if vacant and ready for development. The Board notes that the value for each year in the 2019/2020 two-year assessment cycle should be the same, absent unusual conditions. *Cherry Hills Country Club v. BOCC Arapahoe Co.*, 832 P.2d 1105, 1109 (Colo. App. 1992); §§ 39-1-104(10.2), 11(b)(I), C.R.S. The Board credits Ms. Cabe's testimony as an accurate description of the condition of the improvements on January 1, 2019. The Board finds that an unusual difference in the physical condition of the property did exist between the January 1, 2019 and January 1, 2020 assessment dates to warrant the change in value. Because the 2019 and 2020 tax years are in the same two-year assessment cycle, the same statutory base period market data was used for both values. The Board further finds the 2020 value is relevant consideration to the 2019 value of the property because Respondent provided a market approach to value analysis of the subject for 2019 as if it were a vacant site, as part of the appraisal presented at hearing; the same condition of the property that is represented in the 2020 assigned value.

After considering the evidence, and a downward adjustment for an unspecified cost of the pending demolition of the subject's improvements as well as time and incentive for a buyer to undertake that project after purchasing the property, the Board concludes to a value for the subject property of \$750,000.

Mr. Martinez testified that subsequent to completing his appraisal, he discovered that the plat map including the subject property shows a smaller square footage for the residential improvements and a larger lot size of 7,285 square feet compared to the 6,583 square foot lot size

shown in the Assessor's records and used in his appraisal. Because the Board concludes the appraisal of the property, as improved, does not present a credible indication of value reflecting the condition of the improvements on the assessment date, the Board gives no further consideration to the potential impact of the smaller residence size in this appeal. The Board has considered Mr. Martinez's testimony that the larger lot size shown on the plat would, in his opinion, require an upward adjustment to the value of approximately \$10,500. However, the Board finds that Mr. Martinez's vacant lot sales analysis includes the sale of a 7,138 square foot lot and notes that he concluded that no size adjustment for that lot size was necessary in comparison to the presumed smaller lot size for the subject property. Therefore, the Board concludes that no support has been provided to convince the Board that the lot size discrepancy reported by Mr. Martinez would result in a higher value for the subject property than his value conclusion of the lot as if vacant.

Petitioner presented sufficient probative evidence to prove the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has met its burden of proving that the assigned value for tax year 2019 is incorrect. Using the limited market information provided, the Board concludes to a value for the subject property of \$750,000.

### **ORDER**

The petition is **GRANTED**. The Boulder County Assessor's Office is directed 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).

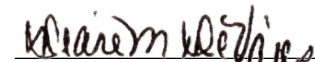
**DATED and MAILED** this 11th day of May, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

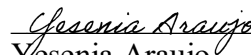
  
Louesa Maricle

Concurring Board Member:

  
Diane M. 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.

  
Yesenia Araujo