

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79763
Petitioner: B&G FRANCIS, LLC, v. Respondent: PITKIN COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on May 5, 2021, Diane DeVries and John DeRungs presiding. Cecil Hernandez, the managing owner of Petitioner B&G Francis, LLC, appeared pro se. The Respondent was represented by Richard Y. Neiley III, Esq. Petitioner protests the actual value of the subject property for tax year 2020.

EXHIBITS

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

DESCRIPTION OF THE SUBJECT PROPERTY

729 West Francis Street, Unit 2, Aspen CO
Schedule No. R008764

The subject property is the lower unit of a duplex residence in the Gold Rush Condominiums within the City of Aspen. Built in 1955, it has a 3 bedroom 2 bath layout with 1,371 square feet. It was originally constructed in 1955 but was remodeled by permit in 2019.

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:	\$1,850,000
Petitioner’s Requested Value:	\$1,650,000

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, 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.*

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

Mr. Hernandez offered a combined sale price of the subject property and upper unit of the duplex into evidence, but the Board found it was not admissible evidence of the subject's value for tax year 2020. For tax year 2020, the subject property must be classified and valued, per Colorado statute, according to its physical characteristics and condition on January 1, 2020 – the assessment date. (§ 39-1-105, C.R.S.; 2 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 6, at 6.1 (rev. Jan. 2021)). The subject property must be valued as of an effective appraisal date of June 30, 2018, using market data from a minimum of 18 months before July 1, 2019 and a maximum of 60 months before July 1, 2019. § 39-1-104(10.2)(d), (12.2), C.R.S. § 39-1-104, C.R.S. This "level of value" must then be adjusted to reflect market conditions as of June 30, 2018. *Id.* The property was under contract for sale to Petitioner as of October 2018, and

the sale closed in April 2019, but these dates are past the data collection period the Board may consider.

The Respondent presented expert testimony by Cheryl A. Hasselbring, employed by the Pitkin County Assessor's Office, who prepared a real estate appraisal of the property. She selected six comparable sales within the two-year data collection period from July 1, 2016 through June 30, 2018, preferring to stay within about ten blocks of subject. But after applying the county supported annual time adjustment of 0.75% per month or 9% per year to those comparable sales, it produced a wide range of sale prices from \$2.2 to over \$4.5 million.

She then made gross adjustments of at least 50% and sometimes well over 100% to the sales. By applying both upward and downward adjustments of almost \$1.25 million to Sale 4, alone, and closer to \$2 million or more to the remaining sales, it calls into question whether these sales were really comparable to begin with. That said, Sale 4 was next door to the subject and was built in the same year. While both parties said they had been inside this comparable, Mr. Hernandez called into question an adjustment made of \$221,600 for inferior construction which would have put the indication nearly at his recommended value were it not applied. The Board finds it is unlikely that the construction quality of a detached single family home, such as Sale 4, would be below that found in the subject duplex unit next door. The Board was not persuaded by Ms. Hasselbring's explanation in support of this adjustment. The Board finds Sale 4 supports Petitioner's contention that the County value for the subject is incorrect, and that his requested value of \$1,650,000 is correct.

Although the Board recognizes it is not sales data, and so gives its less weight, the adjusted listing price of the subject on the appraisal date bolsters the Board's conclusion that Petitioner has shown the County value is incorrect, and the requested value of \$1,650,000 is correct. On the appraisal date, the subject was listed for sale, along with the upper unit of the duplex residence, for \$3,499,000. (The combined units were initially listed for \$3.9 million, but the offering price was decreased a few weeks before the appraisal date.) On the appraisal date, the subject had been on the market for six months, a time period indicating good market exposure. In her appraisal, Ms. Hasselbring reported the list price only and did not analyze why it was lowered shortly before the effective date of value, or explain whether she concluded it did or did not supply a value indication.

Based on other county sales data, Ms. Hasselbring reported that the ratio between actual and listed sales prices was 90 to 95% at this location. At an average of 92.5%, that suggests that both units would bring \$3,236,575, or \$3.237 million. Meanwhile, she also testified that the subject unit's location on the lower level would bring less than the upper level unit. That then provides an indication of less than \$1.618 million (50% of \$3.237 million) for the subject alone, although before its remodeled condition on January 1, 2020 is accounted for.

Since statute provides that the subject's condition on January 1, 2020 be considered, the value must reflect remodeling conducted in 2019, even though it occurred after the effective date of value. Contrary to Mr. Hernandez's reports that he spent \$100,000 on remodeling, Ms. Hasselbring reported that the cost was closer to \$175,000 based on a third party appraisal of the subject provided to her by the petitioner. Absent details of the extent of that interior work from either party, using the average of these costs at \$137,500 seems reasonable. Together with an

indication of its value at less than \$1.618 million, or less than \$1,756,000, this supports Petitioner's recommended value of \$1,650,000.

The Board finds Petitioner met its burden of proving that the assigned value for tax year 2020 is incorrect. The Board further finds that the evidence supports Petitioner's requested valued of \$1,650,000 for tax year 2020.

ORDER

The petition is **GRANTED**. The Pitkin County Assessor's Office 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 17th day of May, 2021.

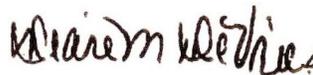
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



John DeRungs

Concurring Board Member:



Diane 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.



Casie Stokes