

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76129</b>
Petitioner:  <b>GREGORY FAMILY LIVING TRUST,</b>  v.  Respondent:  <b>EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS and EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS.</b>	
<b>ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on March 5<sup>th</sup>, 2020, Louesa Maricle and Amy J. Williams presiding. John H. Gregory appeared on behalf of Petitioner. Respondent was represented by Steven Klaffky, Esq. Petitioner seeks an abatement and refund of taxes on the subject property for tax years 2017 and 2018.

**EXHIBITS AND WITNESSES**

The Board admitted Petitioner’s Exhibit 1, Respondent’s Exhibit A, and expert testimony by Respondent’s witness Eva Brimble, Ad Valorem Appraiser employed by the El Paso County Assessor.

**DESCRIPTION OF THE SUBJECT PROPERTY**

2142 Palm Drive, Colorado Springs, Colorado 80918  
El Paso County Schedule No.: 63282-02-025

The subject property is a single family townhome built in 1983. It is classified as residential property. The parties have stipulated that the square footage of the subject property for all relevant years is 1,844 square feet (including 1,201 square feet of above-grade gross living area and 643 square feet of basement area). The Board also understands that the El Paso County Assessor (“Assessor”) previously recorded the square footage incorrectly as 1,964 square feet, and that the Assessor corrected this record at some time between April and August of 2019.

The subject property's actual values, as assigned by the El Paso County Board of County Commissioners ("BOCC") below and as requested by Respondent, are:

BOCC's Assigned Value: \$176,141  
Respondent's Requested Value: \$176,141

### **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 board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.*

### **APPLICABLE LAW**

#### **I. Abatement and Refund**

An abatement of property taxes is required when taxes have been levied illegally or erroneously. § 39-10-114(1)(a)(I)(A), C.R.S. (2019). A refund is required when those taxes have been collected by the treasurer. *Id.*

Each real property in Colorado must be taxed according to its value, unless it is exempt from taxation. *See Mesa Verde Co. v. Montezuma Cty. Bd. of Equalization*, 898 P.2d 1 (Colo. 1995). For residential real property, value must be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. (2019). The market approach to appraisal requires identification of comparable sales. *See* § 39-1-103(8)(a)(I), C.R.S. (2019). Once a sufficient number of comparable sales have been identified, they must be adjusted to "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.” *Id.*

For example, overpaid taxes must be refunded if they were over-levied due to an overvaluation of the property. Overvaluation may occur, for example, when an assessor relies on incorrect information about a property, such as its square footage, and consequently fails to properly adjust a comparable sale to reflect the degree of comparability in square footage between the comparable sale property and the property at hand.

## **II. Abatement Petitions are Barred by Previous Protests**

Abatement and refund is a separate and independent procedure, for the adjudication of property tax disputes, from the protest and adjustment procedure. *See Wylar/Pebble Creek Ranch v. Colo. Bd. of Assessment Appeals*, 883 P.2d 597, 599 (Colo. App. 1994).

Generally, overvaluation claims under the abatement and refund procedure are prohibited if a taxpayer has previously challenged the valuation for that tax year under the protest and adjustment procedure. *Yale Investments, Inc. v. Property Tax Adm’r*, 897 P.2d 890, 892 (Colo. App. 1995). *See also* § 39-10-114(1)(a)(I)(D), C.R.S. (2019) (“No abatement or refund of taxes shall be based upon overvaluation of property if an objection or protest to such valuation has been made and a notice of determination was mailed to the taxpayer”).

## **THE BOARD’S FINDINGS AND CONCLUSIONS**

Petitioner did not provide comparable sales to support the requested value. Rather, Petitioner is requesting a reduction in value based upon a square footage error, said error having overstated the square footage by approximately five percent. Therefore, a five percent reduction in value for property tax years 2017 and 2018 is being requested. As the assigned value for 2017 and 2018 is \$176,141, the Board infers that Petitioner is requesting a value of approximately \$167,000, though no specific value was requested.

Respondent employed the market approach, also known as the Sales Comparison Approach, within a property specific appraisal, selecting three comparable sales. After application of appropriate adjustments, the sales indicated a value for the subject of \$212,520 for property tax years 2017 and 2018. One of the sales selected was a sale of the subject, the subject selling in April of 2016 for \$213,000. Correctly, the sale of the subject was considered the most comparable sale and, therefore, given the most weight.

The Board finds Respondent’s evidence and testimony to be credible. While there was an error in square footage as previously recorded by the Assessor, considering the de novo nature of this hearing, the property-specific sales evidence presented does not support a reduction in value. The use of one variable alone to determine value is not reflective of the nature of the marketplace or the actions of participants in the market. Petitioner’s analysis ignores the variety of variables

that are proven to have a quantifiable impact on value. As a result, although the Assessor previously recorded the subject property's square footage incorrectly, the Board is not persuaded that this error in square footage had a measurable impact on the assigned value.

Summarily, Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 2017 or 2018.

Additionally, the Board finds Petitioner does not have standing to request an abatement for tax year 2017. Petitioner appropriately filed a protest of the subject property's value in May of 2017 and a Notice of Determination was issued. Therefore, an abatement action for the same tax year is statutorily prohibited; Petitioner only gets one bite of the apple.

### **ORDER**

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.


Section 39-8-108(2), C.R.S. (2019).

**DATED and MAILED** this 17<sup>th</sup> day of April, 2020.


**BOARD OF ASSESSMENT APPEALS:**




Drafting Board Member:

  
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Amy J. Williams

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 decision of  
the Board of Assessment Appeals.

  
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Jacqueline Lim