

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76561</b>
Petitioner:  <b>PATRICIA O’CONNOR,</b>  v.  Respondent:  <b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b>	
<b>ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on April 28, 2020, Debra A. Baumbach and Amy J. Williams presiding. Petitioner appeared pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2019 actual value of the subject property.

**EXHIBITS AND EXPERT WITNESSES**

The Board admitted into evidence Petitioner’s Exhibits 1-6 and expert testimony by Petitioner’s witnesses Johnathan Klinowski, Certified Residential Appraiser, and Martha Potter-Goldstein, Real Estate Agent. The Board also admitted Respondent’s Exhibits A-B and expert testimony by Respondent’s witnesses Kimberly Kunish, Certified Residential Appraiser, and Jessica Sampson, Assistant Residential Supervisor, both who are employed by the Arapahoe County Assessor’s Office.

**DESCRIPTION OF THE SUBJECT PROPERTY**

22 Viking Drive, Cherry Hills, Colorado 80113  
Arapahoe County Schedule No. 032020415

The subject property is a single-family ranch-style residence built in 1970. The lot is 0.86 acres. The improvement has a total finished square footage of 4,2860 square feet. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) and as recommended and requested by the parties, are:

CBOE's Assigned Value:	\$1,439,800
Respondent's Recommended Value:	\$1,399,000
Petitioner's Requested Value:	\$1,293,350 to 1,335,600

**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. Colo. 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, a 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**

In valuing residential properties for tax purposes, Colorado's statutes and constitution require that value be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(8)(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), 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 an 18-month period. § 39-1-104(10.2)(d), C.R.S. (2019). If sufficient comparable sales are not available during the 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.* Said level of value shall be adjusted to the final day of the data gathering period, which for tax year 2019 is June 30 of 2018. § 39-1-104(10.2)(a), C.R.S. (2019).

### **FINDINGS AND CONCLUSIONS**

Petitioner provided a fee appraisal prepared by Jonathan Klinowski. Within said appraisal, Mr. Klinowski used three comparable sales, all which were within the appropriate data collection period, and all which were located in the Cherry Hills neighborhood. These comparable sales ranged in price from \$1,040,000 to \$1,239,300, and after adjustment, Mr. Klinowski's analysis indicated a value of \$1,250,000 for the subject property.

Respondent's appraisal, prepared by Kimberly Kunish, also utilized three comparable sales. As with the sales used by Petitioner, all of the sales used by Respondent were within the appropriate data collection period and all were located in the Cherry Hills Neighborhood. Respondent's selected comparables ranged in price from \$1,250,000 to \$1,500,000, and after adjustment indicated a value of \$1,399,000 for the subject property.

While the comparable sales utilized in both appraisal reports were found to be reasonably comparable to the subject property, the major difference in the two value analyses was application of a time trend adjustment. Respondent's appraiser applied an adjustment for time and Petitioner's appraiser did not. The Board finds application of a time adjustment to be reasonable, not only because it is generally understood and accepted that residential sale prices were increasing during the data collection period, but also because section 39-1-104(10.2)(a), C.R.S. (2019) requires application of a time trend, if one exists. Respondent supplied sales ratio study summary data indicating the Cherry Hills neighborhood experienced an upward trending time adjustment of 0.25 percent per month, and the Board finds that an upward time trend exists.

Considering the above, the Board finds Respondent's valuation and analysis to be more credible. Summarily, the Board concludes that the preponderance of the evidence and testimony supports the value of \$1,399,000 as recommended by Respondent.

### **ORDER**

Petition is GRANTED. Respondent is ordered to reduce the value of the subject property for tax year 2019 to \$1,399,000. The Arapahoe County Assessor is directed to adjust his/her 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.


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

**DATED and MAILED** this 13<sup>th</sup> day of May, 2020.

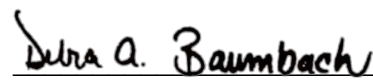
**BOARD OF ASSESSMENT APPEALS**



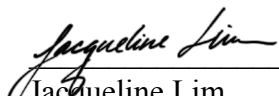
Drafting Board Member:

  
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Amy J. Williams

Concurring Board Member:

  
\_\_\_\_\_  
Debra A. Baumbach  
*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