

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78632
Petitioner: L H LLC, v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 18, 2020, Samuel M. Forsyth and Sondra W. Mercier presiding. Petitioner appeared pro se. Respondent was represented by Christopher McMichael, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

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

DESCRIPTION OF THE SUBJECT PROPERTY

3454 W 67th Ave., Denver
 County Schedule No.: 0182505310035

The subject property is two story duplex constructed in 2007. The site size is 6,250 square feet. The duplex has a total of 2,500 square feet of gross living area above grade (1,250 square feet on each side), six bedrooms (three bedrooms on each side), five baths (two full and one ½ bath on each side), two two-car attached garages (one two-car garage on each side), and 1,250 square feet of unfinished basement (750 square feet unfinished basement on each side). The interior condition is determined to be average – this condition determination is not disputed. The subject property’s actual value as assigned by the County Board of Equalization (“CBOE”) below and as requested by Respondent and Petitioner are:

Adams County Board of Equalization's Value	\$500,000
Petitioner's Requested Value	\$362,720
Respondent's Requested Value	\$500,000

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.* However, in this appeal, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 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.

FINDINGS

Petitioner believes that the County has over-valued the subject property. Petitioner's case included disagreement of adjustments by the County's expert appraiser. The disagreements were for the basement unfinished adjustments, excessive bath count adjustments, garage adjustments,

age/effective age adjustments, garage adjustments and adjustments for change in market condition (time). Petitioner also stated that the comparable sales analyzed by the Respondent's appraiser are ranch style and that the subject is a two-story style. Petitioner contends that the cost to construct a ranch style duplex is greater than for a two-story which indicates that a ranch style structure is superior and deserves a negative adjustment. Petitioner also believes that the adjustment for market conditions by the Respondent is excessive. Petitioner contends that the market condition adjustment is excessive especially for older sales. Petitioner specifically objected to the use of comparable sale 3 by the Respondent which sold October of 2016, 20 months before the date of value. Petitioner also included 8 duplex sales, one of which was included with the Respondent's appraisal, all of which he asked be considered by the Board in support of his request for a lower value. All of the comparable sales provided by the Petitioner are ranch style homes. Only one of the sale dates of the comparable sales transacted in 2016, the others sold in 2017 and 2018.

Respondent called as an expert witness Eric Norberg. Mr. Norberg is employed as a staff appraiser with the Adams County Assessor's office. He holds an Ad Valorem appraisal license with the state of Colorado. Mr. Norberg developed an opinion of value based solely on the sales comparison (market) approach to value as required by statute for residential classified properties. Mr. Norberg applied the following criteria for his comparable selection: distance from subject, age of construction, and size of living area. His appraisal identified 3 comparable sales, all duplex sales. The sales prices of the comparable sales, before time of sale adjustment, ranged from \$368,000 to \$400,000. After adjustment for time, the comparable sale prices ranged from \$443,200 to \$467,360. Mr. Norberg made adjustments for bath count, garage, size of site, basement, effective age, and above grade square footage. Adjusted values of the comparable sales were \$512,225 for comparable sale 1, \$482,390 for comparable sale 2, and \$548,145 for comparable sale 3.

CONCLUSION

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2019 is incorrect. The Petitioner provided insufficient evidence to establish the market value of the subject property. The Board's determinations are required to have a reasonable basis in the law. *Home Depot USA, Inc. v. Pueblo County Bd. of Com'rs*, 50 P.3d 916, 920 (Colo. App. 2002).

Petitioner offered opinions of the adjustment values of the Respondent and offered alternative adjustment values but provided no substantive support to prove the adjustments of the Respondent to be incorrect. Respondent testified that the adjustments were arrived at subsequent to a two-step process – regression analysis and then scrutiny by the Appraiser based on his experience and the dynamics of the local market of the subject property. The Board finds Respondent's adjustments to be more credible than the Petitioner's.

Petitioner expressed doubt about the market condition (time) adjustment applied by the Respondent. Section 39-1-104-(10.2)(d) C.R.S. requires that that sales be adjusted to the date of value (appraisal date) to reflect the change in market conditions (time adjustment). The Board finds that the Respondent appropriately determined the need for market condition adjustments.

The Board finds also that the values of the time adjustments were properly determined and accurately applied.

Finally, the Petitioner provided 8 comparable sales for the Board to review. The Board notes that the Respondent's appraisal report considered as many as 15 possible variables for adjustment and applied just over an average of 6 individual adjustments for each of the comparable sales. For the 8 comparable sales, Petitioner offered only the following variables: the sale date, sale price, and county value. No adjustments were applied to the sales. As rebuttal, Mr. Norberg testified that he considered the sales provided by the Petitioner. He believed his sales were more appropriate as a starting point for comparative analysis based on the following metrics:

	<u>Petitioner's sales</u>	<u>Respondent's sales</u>
Avg. proximity to subject	2.27 miles	1/2 mile
Avg. size of living area*	1,925 square feet	2,321 square feet
Average year of construction**	1966	1988
*Subject's living area – 2,500 sq. ft.		
**Subject's year of construction – 2007		

The Board finds that the comparable sales selection and descriptions by the Respondent are superior to the Petitioner's.

The Board notes for further consideration that rents for a subject property and comparable properties may be introduced and analyzed within a market approach using a Gross Rent Multiplier. This use of income as a unit of comparison is permitted by statute, section 39-1-103, C.R.S., and is appropriate to consider as a lagging indicator of value. Rents were not provided or referenced in this hearing for the subject or the comparables. The Board notes the potential value of Gross Rent Multiplier calculations, and will accept such information as a "test of reasonableness" for income properties.

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 4th day of May, 2021.

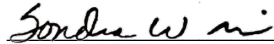
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel M. Forsyth

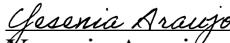
Concurring Board Member:



Sondra W. Mercier
*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