

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78763
Petitioner: CYNTHIA PAGANO, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 13, 2020, Gregg Near and Valerie Bartell presiding. Petitioner appeared pro se. Respondent was represented by Michael A. Koertje Esq. Petitioner protested the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

655 Arapahoe Avenue
 Boulder, CO 80302
 County Schedule No.: R0004872

The subject property is a two story single family residence containing 2,682 square feet of living area above grade and a finished basement containing 1,006 square feet. The home was constructed in 1909 and is located on a 4,501 square foot lot. The property does not have a garage. 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:	\$1,160,000
Respondent’s Recommended Value:	\$1,330,000
Petitioner’s Requested Value:	\$950,000

Board's Concluded Value: \$1,160,000

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, 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.

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

Petitioner presented no comparable sales to support her requested valuation of the subject property. Petitioner provided testimony regarding the location and condition of the subject property. Further testimony was presented objecting to Respondent's comparable sales and their location, the valuation procedures applied and insufficient consideration of the subject property's condition, lot size, lack of a garage and other deficiencies. Petitioner also protested the Respondent

failed to provide a copy of the appraisal report prior to the hearing, but also stated she was in possession of the Sales Comparison Grid shown on page 15 of Respondent's Exhibit A. Respondent indicated the report was emailed to Petitioner by the Rule 11 deadline. The Board finds it is likely that Petitioner received the report, but even assuming she did not, that there was no prejudice to Petitioner on that basis.

The comparable sales presented by Respondent range in sale price from \$1,095,115 to \$1,790,000 and range in above grade living area from 1,668 to 2,824 square feet. The sales bracket the subject's living area. Based on the similarities between each of these comparable sale properties and the subject, the Board finds that these sales are appropriately representative of the subject property's value under the market approach.

Respondent presented expert testimony by David A. Martinez, an Ad Valorem appraiser employed by the Boulder County Assessor's Office. Mr. Martinez testified regarding the development and conclusions relating to his appraisal report on the subject property.

The Board determines the significant concerns of the Petitioner, as noted above, and Respondent's approach to these items are as follows:

1. Petitioner contends Respondent's comparable sales are not within the subject neighborhood; specifically the Creekwood subdivision. The Board finds persuasive the testimony of Respondent's witness regarding the proximity of the comparable sales and their location within Economic Area 101 as determined by the Assessor.
2. Petitioner maintains the subject property is burdened by proximity to traffic and rental properties. The Board finds, based on the testimony of Respondent's witness that the age, location and traffic counts of the subject and the comparable sales are sufficiently similar.
3. Petitioner states the subject is controlled by a Historic Designation that restricts the homeowner's ability to maintain and modernize the home. The Board was swayed by the testimony of Respondent's witness that all properties within Boulder County past a certain age are designated as "Landmarks" and, as such, they are similarly restricted in use.
4. Petitioner maintains the subject lot is too small to allow a garage. The Board finds the comparable sales utilized by the witness bracket the subject's lot area and all were adjusted for differences in size. In addition, 4 of the 5 comparable sales utilized did not have garages.
5. Petitioner asserts Respondent's value does not correctly consider property deficiencies. The Board finds compelling Respondent's efforts to conduct an interior inspection and finds Petitioner's refusal to allow such an inspection negates any attempt on Petitioner's part to introduce the claimed inadequacies. In addition, Petitioner submitted no documentary evidence of the claimed deficiencies.

After review and careful consideration of the testimony and exhibits provided by both parties the Board finds Petitioner has provided insufficient probative evidence to persuade the Board that the Assessor's valuation is incorrect.

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.

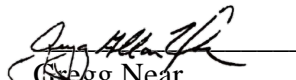
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 4th day of January, 2021.

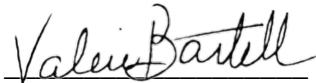
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:




Gregg Near

Concurring Board Member:



Valerie Bartell

*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.

