

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 78977</b>
Petitioners:  <b>EARLE W. SCHWEIGER, III and SHISHKA MORRIS VALERIA,</b> v. Respondent:  <b>BOULDER COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on November 20, 2020, Diane DeVries and John DeRungs presiding. Petitioner Earle W. Schweiger appeared pro se. Respondent was represented by Olivia D. Lucas, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioners’ Exhibits 1-5 and Respondent’s Exhibit A and B.

**DESCRIPTION OF THE SUBJECT PROPERTY**

2111-2113 4th Street, Boulder, CO 80304  
Schedule #R0003710

The subject property is a 7,426-SF site in the Mapleton Historic District of Boulder. It is improved with a one-story ranch style duplex residence built in 1956 that operates as a rental property. The south unit at 2111 4th Street is 864-SF with a 2-bedroom 1-bath layout and a one-car garage. The north unit at 2113 4th Street is 532-SF with a 1-bedroom 1-bath layout. Total square footage is 1,396-SF.

The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioners, are:

CBOE's Assigned Value: \$1,137,200  
Petitioners' Requested Value: \$844,320

### **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. (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.

### **FINDINGS AND CONCLUSIONS**

The Board heard the testimony of Petitioner Earle W. Schweiger, III. The Petitioner objected to the County's use of sales of other homes closer to downtown and the CU campus to value the subject. He believed that this overvalued his property, and he used maps and measured distances to demonstrate it. Using photos, he also argued that although it lies on the edge of the

historic district, his home has none of the character found within it. This location has also restricted the alteration of his improvement despite his itemized design cost outlays and time before the historic board. He referenced traffic volume counts and discussed traffic patterns that have made 4th Street very busy since he last lived there.

Petitioner presented expert testimony by Michael J. Burkhardt, a certified residential appraiser, who has valued properties since 1988. He testified that he accepted and applied the County's time adjustment. Of the five comparables he presented, Sale No. 3 at 537 Dewey Avenue was also selected by Respondent (their Sale No. 5). About half of Mr. Burkhardt's adjustment to this sale was downward for its location on a quieter street. He reached an indication at \$821,323, overall, within 3% of Petitioners' recommended value. That was also in line with what was indicated by his adjusted Sales 2 and 4, which were also on busy streets (Mapleton and 6th Street). His final conclusion of value for the subject property was \$844,320.

Respondent presented expert testimony by David A. Martinez, employed by the Boulder County Assessor's Office. As noted, Mr. Martinez also selected 537 Dewey Avenue as a comparable sale. But he made his most significant adjustment, by far, in an *upward* direction for its non-historic district location. He reached an indication at \$1,078,637, overall, and within 5% of Respondent's recommended value. But the Board finds that the sale of only a single duplex property within the historic district is insufficient evidence to support that adjustment made to duplexes outside the district (such as the subject). Mr. Martinez observed that he found little traffic present at the time of his visit. The Board found no evidence that he considered available sales on busier streets.

The Board finds that Mr. Martinez showed insufficient support for the adjustments he made to his sale comparables' prices for location, and failed to consider sales on busy streets (comparable to the subject). We find therefore that the Petitioners have met their burden of proving that the assigned value for tax year 2019 is incorrect. The Board was persuaded by the appraisal conducted by Mr. Burkhardt that the subject property's correct value for tax year 2019 is \$844,320.

### **ORDER**

The petition is **GRANTED**. The Boulder 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.

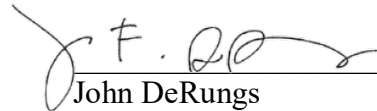
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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 10th day of May 2021.

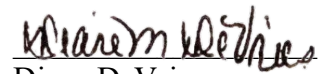
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

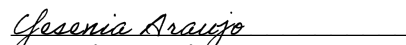
  
John DeRungs



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.

  
Yesenia Araujo