

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p>	<p>Docket No.: 79094</p>
<p>Petitioners:</p> <p>DON SUMMERFIELD and CHRISTINE SUMMERFIELD,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	
<p align="center">FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on September 1, 2020, Diane DeVries and Valerie Bartell presiding. Petitioner Don Summerfield appeared pro se on behalf of Petitioners. Respondent was represented by Olivia Lucas, Assistant County Attorney for Boulder County. 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

Address: 4854 Dakota Boulevard, Boulder, CO 80304
County Schedule No.: R0118248

The subject property is a single-family residential property. 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:	\$ 802,800
Petitioner’s Requested Value:	\$ 700,000
Board’s Concluded Value:	\$ 802,800

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 or County Board of Equalization's valuation or classification 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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 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.*

FINDINGS AND CONCLUSIONS

The subject property is a single-family residential property located in the City of Boulder, Colorado. Petitioner provided testimony, stating that the subject is uniquely located in a community with homes of mixed age and condition. Furthermore, Petitioner stated the subject is proximate to Lee Hill Drive, a noisy thoroughfare. Both conditions, Petitioner stated, were not considered in the initial assessment of value for the subject property, under the mass appraisal method. Petitioner provided three comparable sales occurring between November 2016 and June 2018 for consideration in Exhibit 1. The unadjusted sales provided ranged between \$700,000 and \$800,000, and were within two blocks of the subject; though they were located further from the noise influence of Lee Hill Drive compared to the subject. No comparable sales with a similar noise influence as the subject were presented by Petitioner.

Respondent provided Exhibit A, an appraisal of the subject property, dated August 4, 2020, written by David Arthur Martinez, a Licensed Ad Valorem Appraiser for the Boulder County Office of the Assessor. Mr. Martinez was also a witness for Respondent. Mr. Martinez's report estimated the subject property value as of June 30, 2018 to be \$830,000. Exhibit A considered the three comparable sales provided by Petitioner, as well as two additional comparable sales which were also located within two blocks of the subject. The comparable sales bracket the subject's above grade area and effective age. Mr. Martinez did not adjust any of the sales prices for location or noise influence. However, Mr. Martinez testified that he researched the impact of the subject's location near Lee Hill Drive, and could not determine a demonstrable impact on value in the market. The Board finds the expert testimony of Mr. Martinez, supported by his appraisal, persuasive on this point. The reconciled value of Exhibit A placed the most weight on Comparable Sale 1, which Petitioner also presented as a comparable sale, and required the fewest adjustments. The adjusted value of this Comparable Sale 1 was \$830,690. This value supports the value assigned to the subject by the Boulder County Board of Equalization.

The Board finds the Petitioner did not demonstrate the impact of the subject's location and noise influence on value. The Board finds that Petitioner did not provide sufficient evidence to demonstrate the value assigned by the Boulder County Board of Equalization of \$802,800 is incorrect. The sale prices of the three comparables sales presented by Petitioner, when properly adjusted for market conditions and their similarities and dissimilarities with the subject, support the assigned value.

The Board concludes that Petitioners have not met their burden of proving the assigned value for tax year 2019 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.

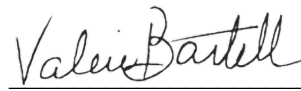
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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 26th day of February, 2021.

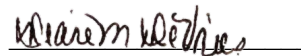
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie C. Bartell

Concurring Board Member:

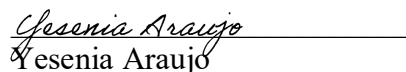


Diane M. DeVries

*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