

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DOUGLAS BRUCE,</p> <p>v.</p> <p>Respondent:</p> <p>HUERFANO COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 51735</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 20, 2010, James R. Meurer and Lyle D. Hansen presiding. Petitioner is protesting the 2009 actual value of the subject property.

Petitioner indicated that in his opinion there was a legal defect in the procedures of the Board of Assessment Appeals. He stated that Rule 14(a) of the Board's Procedures of Practice and Procedures of Review, which indicates that petitioner has the burden of proof, is overruled by the Taxpayer's Bill of Rights.

The Colorado Supreme Court in *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005) found, "A taxpayer's burden of proof in a BAA proceeding is well established: a protesting taxpayer must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding." *Id.* at 204. The court also addressed the effect of the Taxpayer's Bill of Rights (Colorado Constitution article X, section 20) on the burden of proof:

Article X, section 20 eliminates the presumption favoring a pending valuation in property tax appeals. . . [W]e have concluded that the relationship between the "rebuttable presumption" and the burden of proof is simply historical. We view the presumption as otherwise irrelevant to this case. By eliminating the presumption of correctness, article X, section 20 attempts to put the taxpayer on equal footing with the county. . . [T]he elimination of the presumption comports with the rule that a taxpayer must demonstrate that an assessment is incorrect.

Id. at 207. In determining this matter, the Board applies the Board’s Rule 14(a), “the petitioner shall have the burden of proof” and the standard set forth in *Sampson*, “a protesting taxpayer must prove that the assessor’s valuation is incorrect by a preponderance of the evidence.”

PROPERTY DESCRIPTION:

Subject property is described as follows:

**406 West Pinon Street, Walsenburg, Colorado
(Huerfano County Schedule No. 21295)**

The subject property consists of a one and one-half story, single-family residence of frame construction. The improvement was built in 1917 and contains a total of 2,376 square feet on the main level and the half story. There is a small basement area with a dirt floor. There is a small one-car garage/shed. The improvements are situated on a site containing a total of 7,500 square feet.

Petitioner presented an indicated value of \$15,000.00 for the subject property.

Petitioner presented no comparable sales to support his value conclusion. Petitioner derived his value by increasing the Huerfano County Assessor’s value of \$12,050.00 established in 2008 by 25% to \$15,000.00.

Petitioner testified that the residence is very old and in very poor condition. Petitioner purchased the property on the open market at public sale for \$4,000.00. Purchaser testified that the residence was boarded up and has not been occupied since he purchased the property. He testified that the only improvements accomplished were painting the exterior and upgrading some of the boarded window coverings. He testified that the residence has no heating, no plumbing, no water service from the City of Walsenburg, no floor coverings, no kitchen cabinets and no windows. He testified that the interior walls were damaged, that the electrical system will need replacement and that the residence is uninhabitable in its condition. He described the residence as a “shell.” He testified that it would take tens of thousands of dollars to make the residence habitable. Petitioner indicated that the Huerfano County Assessor increased the value on the property from \$12,050.00 in 2008 to \$46,507.00 in 2009.

Petitioner is requesting a 2009 actual value of \$15,000.00.00 for the subject property.

Respondent’s appraiser, Mr. Holmes, presented a value of \$46,507.00 for the subject property based on the market approach.

Mr. Holmes presented 14 comparable sales ranging in sales price from \$45,000.00 to \$120,000.00. Mr. Holmes included no physical description of the comparable sales and presented no adjustments to derive the value estimate. The 14 sales ranged in sale dates from 7/17/2006 to 6/5/2008.

Mr. Holmes testified that he had requested an interior inspection of the subject from Petitioner. Mr. Holmes further testified that Petitioner refused to grant an interior inspection because it would give cause to a county representative to identify code violations in the improvements, and that this intrusion into his private space is a violation of his rights. Mr. Holmes accomplished an exterior inspection of the subject and relied upon the physical description given to him from Petitioner. After the Huerfano County Assessor assigned a value of \$61,277.00 to the subject, Mr. Holmes re-inspected the exterior of the residence and accomplished adjustments to the assigned value to account for the interior flooring, quality and condition of the residence based upon the information provided by Petitioner. That revised value was then reduced further to reflect a 15% deduction for functional obsolescence attributable to the deficiency elements. He testified that the 15% deduction was an arbitrary figure and was not based upon any supportable data.

Respondent assigned an actual value of \$46,507.00 to the subject property for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2009.

The Board considered both Petitioner's and Mr. Holmes' testimony in order to reach a decision. Since Mr. Holmes was not granted an interior inspection of the residence, the Board relied on Petitioner's testimony describing the condition of the interior of the improvements. The Board gave weight to Petitioner's testimony that the improvements had been boarded up and unoccupied since his purchase date of the property.

The Board concluded that some intrinsic value exists in the exterior upgrades including painting and window coverings that occurred during the base period. The Board agreed with the 15% downward adjustment to the Huerfano County Assessor's initial assigned value for functional obsolescence. The Board concluded that an additional deduction in the revised value was necessary to reflect Petitioner's testimony.

The Board concluded that the 2009 actual value of the subject property should be reduced to \$20,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$20,000.00

The Huerfano County Assessor is directed to change his/her records accordingly.

APPEAL:

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-five 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-five days after the date of the service of the final order entered).

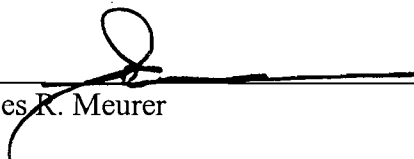
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

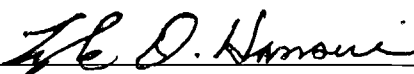
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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

DATED and MAILED this 7th day of September 2010.

BOARD OF ASSESSMENT APPEALS


James K. Meurer


Lyle D. Hansen

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Heather Flannery

