

<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>LARIMER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 72323</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 11, 2018, Sondra Mercier and Cherice Kjosness presiding. Petitioner appeared *pro se* via telephone. Respondent was represented by David P. Ayraud, Esq. also appearing by telephone. Petitioner is protesting the 2017 actual value of the subject property.

Respondent filed a Motion to Dismiss on or about January 18, 2018. Petitioner filed an Answer to Respondent’s Motion to Dismiss on January 30, 2018.

During the July 11, 2018 hearing the Board of Assessment Appeals (“the BAA” or “the Board”) heard the parties’ arguments on Respondent’s Motion to Dismiss as well as on the 2017 valuation of the subject property. The Board reserved the ruling on the 2017 valuation of the subject pending the determination as to the merits of Respondent’s Motion to Dismiss.

I. Motion to Dismiss

Respondent requested the Board to dismiss Petitioner’s appeal due to lack of jurisdiction. According to Respondent, on June 30, 2017, the Assessor, pursuant to Section 39-5-122(2), C.R.S. mailed a Notice of Determination to Petitioner. Respondent provided an Affidavit of Cindy Faulkner, a Senior Applications Support Specialist with the Larimer County Assessor’s Office, attesting that a Notice of Determination was mailed to Petitioner on June 30, 2017 by United States Postal Service. Respondent enclosed a copy of the Notice of Determination, dated June 30, 2017 addressed to Petitioner’s mailing address in Colorado Springs. Respondent also enclosed a copy of the billing from Plum Marketing that reflects an accounting of Larimer County’s 2017 Notices of Determination that were mailed on June 30, 2017.

The June 30, 2017 Notice of Determination clearly states that Petitioner's deadline for appealing the Assessor's decision to the County Board of Equalization ("CBOE") was July 15, 2017. Petitioner did not file an appeal with the CBOE by the July 15, 2017 deadline. Instead, he contacted the Assessor's Office via an e-mail on July 20, 2017 inquiring about the status of his appeal. On July 20, 2017, Larimer Deputy Assessor, Lisa Thieme, responded to Petitioner's inquiry confirming that the Notice of Determination was mailed to him on June 30, 2017. Ms. Thieme also enclosed an electronic copy of the June 30, 2017 Notice of Determination in her e-mail to Petitioner.

In response, Petitioner asserts that he did not receive a Notice of Determination that Respondent alleges was mailed to him on June 30, 2017. According to Petitioner, he first received Respondent's Notice of Determination on July 20, 2017 after contacting the Assessor's Office. Petitioner argues that the July 15, 2017 statutory deadline for appealing the Notice of Determination does not apply because he did not receive the Notice of Determination until July 20, 2017. Petitioner further alleges that Larimer CBOE refused to provide him with an opportunity for an appeal.

II. The Board's Findings

Based on the evidence presented at the hearing, the Board finds that Respondent had timely mailed the Assessor's Notice of Determination to Petitioner in accordance with Section 39-5-122, C.R.S. on June 30, 2017. The Board further finds that Petitioner failed to timely appeal the Assessor's value determination by July 15, 2017 statutory deadline.

Even if, as per Petitioner's assertion, the Larimer Assessor had, in fact, failed to timely mail the Notice of Determination in accordance with Section 39-5-122, C.R.S., Petitioner had an opportunity to file a protest with the CBOE in accordance with Section 39-8-106(3), C.R.S. Per Section 39-8-106(3), C.R.S., if the assessor fails to comply with the provisions of Section 39-5-122, C.R.S. "[t]he objecting person may present his objections and protests in person or by counsel . . . on any day during the meeting of the county board of equalization held for the purpose of hearing appeals."

In this case, CBOE held appeal hearings from July 1, 2017 until August 5, 2017. Petitioner was made aware that the CBOE was hearing appeals until August 5, 2017 as this information was included on the Notice of Determination which Petitioner acknowledged he received on July 20, 2017 via the email from Ms. Thieme. Petitioner did not follow the appeal process as set out in Section 39-8-106 by the August 5, 2017 deadline thereby missing his opportunity to appeal the Assessor's Notice of Determination.

As to Petitioner's allegation that Larimer CBOE refused to provide him with an opportunity for an appeal, Petitioner had the right to appeal CBOE's refusal to the BAA in accordance with Section 39-2-125 (1)(e), C.R.S. by September 12, 2017. This September 12, 2017 deadline to appeal the CBOE's actions was clearly stated on the Notice of Determination that Petitioner conceded he received on July 20, 2017 via the email from Ms. Thieme. Petitioner's appeal to the BAA was postmarked on September 20, 2017, eight days after the statutory deadline.

By statute, compliance with statutory time limits in the filing of administrative appeals is a jurisdictional requirement in such proceedings before the BAA. *Fleisher-Smyth v. Bd. of Assessment App.*, 865 P.2d 922 (Colo. App. 1993). Under the facts presented, the Board finds that Petitioner did not timely protest the Assessor's Notice of Determination to the CBOE. Further, the Board has determined that Petitioner's appeal to the BAA is also untimely.

Therefore, the Board finds that the Board does not have jurisdiction to address the merits of Petitioner's appeal. Respondent's Motion to Dismiss is hereby GRANTED.

III. Merits of Petitioner's 2017 Valuation Appeal

Although unnecessary to reach our decision in this appeal, the Board will nevertheless address the merits of Petitioner's appeal in light of Respondent's offer to stipulate to a lower value for the subject property for tax year 2017 irrespective of the Board's ruling on Respondent's Motion to Dismiss.

A. Preliminary Matters

The Board admitted Petitioner's Exhibit 1. The Board did not admit Petitioner's Exhibit 2 as its contents pertain to Petitioner's protest of the 2018 value of the subject which is not at issue before the Board at this time.

Petitioner objected to the admission of Respondent's Exhibit A, appraisal of the subject property, on the basis that it contains listing information for the comparable properties and that the photographs of the exterior of the subject included within the report were obtained without Petitioner's permission to enter on his property. According to Petitioner, the photographs should be excluded under the "fruit of the poisonous tree" doctrine.

The Board finds that the listing information for the comparable properties contained in Respondent's Appraisal was used for verifying amenities and not for deriving the subject's 2017 value. Further, the Board finds that Petitioner failed to present any legal authorities to convince the Board that the Fourth-Amendment based "fruit of the poisonous tree" doctrine is applicable to a purely civil action such as the one currently before the Board. In any event, the Board did not find it necessary to refer to the photographs of the subject to reach its conclusion as to the subject's 2017 value.

The Board therefore admitted Respondent's Exhibit A noting Petitioner's objections.

Petitioner also made an objection to Board Rule 14 which states that the burden of proof is on Petitioner at the BAA proceedings. According to Petitioner, the Rule is contrary to the TABOR (Taxpayer's Bill of Rights) amendment. The Colorado Supreme Court had previously considered and rejected this very argument in *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). The Board finds that Petitioner's objection to BAA Rule 14 is without a merit.

B. Evidence Presented before the Board

Subject property is described as follows:

**261 Panther Creek Rd., Livermore, CO
Larimer County Schedule No. R0757179**

The subject property consists of a cabin on a 40 acre site in south central Larimer County. The cabin has 560 square feet, one bedroom and one bath. The structure was built in 1987 and is in fair condition. In 1989, a fireplace/wood stove was installed and there is a permitted well.

Petitioner is requesting an actual value of \$70,000 to \$75,000 for the subject property for tax year 2017. Respondent assigned a value of \$133,500 for the subject property for tax year 2017, but is recommending a value of \$94,000 based on a site-specific appraisal.

Petitioner presented no comparable sales. He contends that the assigned value is too high as the property has no certificate of occupancy; no central heating system; no completed plumbing system; no room for a stove; no road to the property and there are no utility services. He uses a gasoline powered generator when he uses the cabin.

Petitioner also argued that his requested value is based on the purchase price of the subject at \$50,000 more than 10 years ago which he believes the Assessor had no justification to increase.

Petitioner is requesting a 2017 actual value of \$70,000 to \$75,000 for the subject property.

Respondent presented a value of \$94,000 for the subject property based on the market approach.

Respondent presented four comparable sales ranging in sale price from \$65,000 to \$140,000 and in size from 153 to 760 square feet. After adjustments were made, the sales ranged from \$94,000 to \$126,800. The value was correlated to the lowest indicated value (Comparable #4) to account for the condition concerns raised by Petitioner.

In response to Petitioner's argument for a lower value based on the subject's condition, Respondent's witness testified that, similar to the subject, neither of the comparables has certificates of occupancy. Further, neither of the comparables has heating systems or fireplaces. Subject property has a fireplace which makes it superior to the comparables in that regard. In addition, neither comparable has utilities. The witness included copies of the listings for the Comparables in order to illustrate that neither of the comparables had utilities. With respect to plumbing, while the subject property has a toilet, Comparables # 2-4 do not and are inferior in that aspect. In response to Petitioner's contention that the subject property does not have room for a stove, Respondent indicated that all but three of Respondent's Comparable sales are smaller than the subject property. The witness also testified that he was able to reach the subject property using a two-wheel drive vehicle; while accessing two of the Comparables required a four-wheel drive vehicle.

C. The Board's Findings

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. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). The Board finds that Petitioner failed to prove that the assessor's valuation of the subject at \$94,000 for 2017 tax year is incorrect. Respondent presented a site-specific appraisal of the subject property consisting of four comparable sales which were adjusted for difference affecting the value. The Board finds the testimony by Respondent's witness credible and his appraisal of the subject property reliable. Petitioner presented insufficient probative evidence to support any allegation of error in Respondent's valuation of the subject.

At the conclusion of the hearing, Respondent's counsel advised the Board that even if the Board were to grant Respondent's Motion to Dismiss, Respondent would nevertheless stipulate to the reduction of subject's 2017 value to \$94,000. The Board concurs with Respondent's proposed stipulated value of \$94,000.

During closing arguments, Petitioner requested the same value be assigned to the subject for tax year 2018. The Board declined Petitioner's request as the 2018 valuation of the subject is not currently before the Board.

ORDER:

The Board grants Respondent's Motion to Dismiss.

The Board concurs with Respondent's proposed stipulated value of \$94,000 for the subject property for tax year 2017.

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-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.

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

DATED and MAILED this 4th day of October, 2018.

BOARD OF ASSESSMENT APPEALS

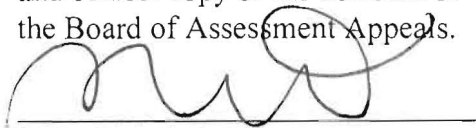


Sondra Mercier



Cherice Kjosness

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



Milla Lishchuk