

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p><b>JAMES D. &amp; APRIL J. BENINE,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ELBERT COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 75590</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 21<sup>st</sup>, 2019, Diane M. DeVries and Amy Williams presiding. Mr. Wayne Ordakowski appeared on behalf of Petitioners. Mr. Bartholomew Greer, Esq. appeared on behalf of Respondent. Petitioners are protesting the 2019 actual value of the subject property. That value— as determined at the hearing below, as recommended by Respondent to this Board, and as requested by Petitioners—is:

Determined Value at CBOE Hearing:	\$710,000
Respondent’s Recommended Value:	\$680,000
Petitioners’ Requested Value:	\$498,500

Petitioners contend that sales within the same subdivision should be of primary consideration, and that the value determined at the CBOE hearing is incorrect for failing to rely on those sales. We disagree, for the reasons discussed below.

**EXHIBITS AND WITNESSES**

The Board admitted Petitioners’ Exhibit 1 and Respondent’s Exhibits A through I. The Board designated Respondent’s witness Michael Akana, Contract Analyst for the Elbert County Assessor’s Office, as an expert in ad valorem appraisal.

**DESCRIPTION OF THE SUBJECT PROPERTY**

**870 Newman Drive, CO  
Elbert County Schedule No.: R106123**

The subject lot is classified as residential land and is located within the Park Line Estates subdivision. The subject property was constructed in 2014 and has a gross square footage of 5,511 square feet.

### **BURDEN OF PROOF**

In a proceeding before the 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 (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 Commission*, 302 P.3d 241, 246 (Colo. 2013).

### **THE BOARD'S FINDINGS AND CONCLUSIONS**

Petitioners provided five comparable sales to support their requested value, all which were within the appropriate data collection period, and all which were located in the same subdivision as the subject. These comparable sales ranged in price from \$373,750 to \$475,675. Detailed characteristic information for these sales was not sufficiently supplied to the Board. As discussed below, the Board finds that the age and square footage of these properties are determinative in this case.

The Board finds that the construction of Petitioners' five comparable sales predated the subject property by 23 to 28 years, while the construction of Respondent's comparable sales predated the subject property by only 7 to 12 years. The Board finds that Respondent's comparable sales were more similar to the subject property with respect to age.

The Board also finds that the gross square footage of Petitioners' comparable sales were smaller than the subject property by 2,895 to 4,551 square feet, while the gross square footage of Respondent's comparable sales were smaller than the subject property by only 747 to 1,823 square feet. The Board finds that Respondent's sales were more similar to the subject property with respect to square footage.

The Board also considers that the distances between the subject and each of Respondent's comparable sales, ranging from 2 to 10 miles, to be a reasonable distance. Finally, while a waste water treatment plant for an adjacent development is planned to be constructed near the subject, said waste water treatment plant has not yet been started. Neither Petitioners nor Respondent provided data which quantified an impact on the subject's value, if any, due to the planned treatment plant. Without supporting data for an adjustment, it is appropriate that none be applied.

The Board finds Respondent's sales more credible, being more similar to the subject with respect to age and gross square footage. Summarily, the Board concludes that the preponderance of the evidence and testimony supports Respondent's recommended value of \$680,000.

**ORDER:**

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$680,000. The Elbert County Assessor is directed to change its records accordingly.

**APPEAL RIGHTS:**

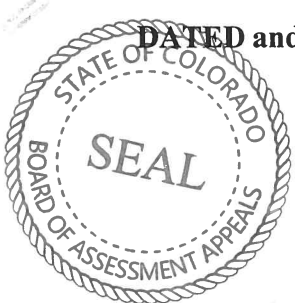
If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine 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.

Section 39-8-108(2), C.R.S. 2019.



**DATED and MAILED** this 17<sup>th</sup> day of March, 2020.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

*Amy Williams*  
Amy Williams

Concurring Board Member:

*Diane M. DeVries*  
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 decision of the Board of Assessment Appeals.

*Jacqueline Lim*  
Jacqueline Lim