

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 75703</b>
Petitioner:  <b>RM &amp; ML, LLC,</b>  v.  Respondent:  <b>SAN MIGUEL COUNTY BOARD OF EQUALIZATION</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 17, 2020, Diane DeVries and Samuel M. Forsyth presiding. Petitioner appeared pro se through its manager, Richard Marsh. Respondent was represented by Amy T. Markwell, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Respondent’s Exhibit A – H.

**DESCRIPTION OF THE SUBJECT PROPERTY**

County Schedule Numbers: R3010030095 (960 acres) and  
R3010030097 (720 acres)

The subject properties are classified as agricultural vacant land and used for dry land grazing of cattle. The subject properties’ actual value, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner:

CBOE’s Assigned Value and Respondent’s value for Account R3010030097 (720 acres):	\$ 10,788
CBOE’s Assigned Value and Respondent’s value for Account R3010030095 (960 acres):	\$ 14,371
Petitioner’s Requested Value for Account R3010030097 (720 acres):	\$ 10,000
Petitioner’s Requested Value for Account R3010030095 (960 acres):	\$ 14,000

## **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 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**

The Assessor's Reference Library gives the following guidance on the valuation of agricultural land in Colorado:

Agricultural land in Colorado is valued exclusively by the capitalization of net landlord income formula. Section 3(1)(a), article X, Colorado Constitution, provides the actual value of agricultural lands, as defined by law, must be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law. The income stream to be capitalized is the economic net income, which is derived from the earning or productive capacity of the land after allowance for typical expenses.

The agricultural land valuation methodology is based on a landlord-tenant relationship with the landlord's potential net agricultural income capitalized into a value indicator using a capitalization rate established by statute. Allowable expenses are those expenses which are normally incurred in whole or in part by a typical landlord. The income and expenses are an average of the ten calendar years prior to the appraisal date for a specified level of value.

ARL Volume III, Chapter 5, page 5.1.

## FINDINGS AND CONCLUSIONS

Petitioner provided no written exhibits for the Board to review. Petitioner contends that the increase in value from the previous two-year assessment cycle, and the associated tax increase, did not account for several adverse factors affecting the subject property. Petitioner testified as to the severe drought conditions affecting the subject property and the region. Petitioner stated that the Bureau of Land Management has denied Petitioner the right to graze on an unspecified amount of land on the subject properties because the vegetation is no longer sufficient for grazing. Petitioner believes the cost and expenses that make up the formula for the valuation of agricultural land used for dry land grazing is generally flawed and does not take into the case specific aspects of the subject acreage. Petitioner stated that he provided alternative costs and expenses to the county during the county-level appeal process, but that the information was not used in the valuation of the subject properties. Petitioner requests a value of \$23,000 for the parcels, which he believes is more in line with the previous two-year valuation and which takes into account the factors above.

Respondent called as an expert witness Peggy Kanter, San Miguel County Assessor. Ms. Kanter presented a report entered in the record as Exhibit A explaining how the subject properties were classified and valued. Ms. Kanter testified that agricultural land valuation and procedures require Assessors to use a formula based on a ten-year average of expenses, commodity prices and capitalization. The Division of Property Taxation provides all 64 counties with the fence expense rates and grazing rental rate. The capitalization rate of 13% is also set by the Division of Property Taxation. Ms. Kanter stated that the expense and income formulae guidelines are established by the Division of Property Taxation and are binding. Ms. Kanter determined the net income by first determining the gross income by multiplying the carrying capacity per acre times the animal unit rental rate. Based on the classification of agricultural use as dry land cattle grazing, the subject properties were determined to have an animal unit carrying capacity of one animal unit per 60 acres per month. Expenses were subtracted from the gross income to arrive at a net income which was capitalized at the prescribed 13% rate. This resulted in an actual value of \$14.97 per acre for the 720-acre parcel and the 960-acre parcel. The actual values of the two parcels are \$10,788 and \$14,371 respectively, as also determined by the San Miguel Board of Equalization.

The Board finds that the Petitioner did not meet its burden of proof to prove the valuation of the San Miguel County Assessor was in error. Petitioner provided no evidence (other than Mr. Marsh's lay testimony) for the Board to review and render judgement that is contrary to the Respondent's valuation procedure. The Board concludes Respondent properly applied statutorily prescribed valuation procedures based on instruction from the Property Tax Administrator's published Assessor's Reference Library, Volume 3, chapter 5, regarding the classification and valuation of the agriculturally classified property. The Board notes this guidance is binding on county Assessors. *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 17 (Colo. 1996).

## 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.

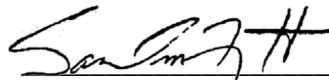
*See* § 39-8-108(2), C.R.S.(rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

**DATED and MAILED** this 15<sup>th</sup> day of January 2021.

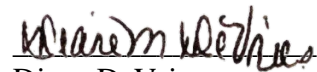


**BOARD OF ASSESSMENT APPEALS:**

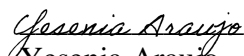
Drafting Board Member:

  
Samuel M. Forsyth

Concurring Board Member:

  
Diane DeVries  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*

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

  
Yesenia Araujo