

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 75725

Petitioner:

LOYD D. JOHNSTON,

v.

Respondent:

CHAFFEE COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 6, 2020, Diane DeVries and Sondra W. Mercier presiding. Petitioner appeared pro se. Respondent was represented by Jennifer A. Davis, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioner's Exhibits 1-5, as well as Respondent's Exhibits A-C. The Board designated as an expert Respondent's witness Mr. Daren Williams, holding a Colorado Certified Residential appraisal license and employed by the Chaffee County Assessor's Office (Assessor).

DESCRIPTION OF THE SUBJECT PROPERTY

20597 County Road 306, Buena Vista, Colorado
Chaffee County Schedule No.: R326929200241

The subject property is a residence in Chaffee County. The subject property's actual values as assigned by the County Board of Equalization (CBOE) below and as requested by each party are:

| | |
|-------------------------------|------------|
| CBOE's Assigned Value: | \$ 649,271 |
| Respondent's Requested Value: | \$ 615,000 |
| Petitioner's Requested Value: | \$ 511,941 |

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of 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 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 the Board of Assessment Appeals, 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).

APPLICABLE LAW

In an appeal to the Board of Assessment Appeals,

a party may seek review of only the total valuation for assessment, and not of the component parts of that total. Each [governing statute] speaks only of the right to appeal the 'value' or the 'valuation assessment set by the Assessor.' Notably absent from these statutes is language that would permit a party to limit the scope of the protest by appealing only a portion or component of the assessed value.

Cherne v Boulder Cty. Board of Comm'rs, 885 P.2d 258, 259 (Colo. 1994).

Thus, a party may not properly seek review only as to individual components of a total assessment. *See id.*

In valuing residential properties, Colorado's statutes and constitution require that the valuation of residential property be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(8)(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), which states:

Use of the market approach shall require a representative body of sales [...] 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.

BOARD'S FINDINGS AND CONCLUSIONS

Petitioner contends that the value placed on his land is excessive, noting that his property had marginal access, steep driveway, and limited site utility for the area behind his residence. Mr. Johnston also objected to Respondent's quality rating for his home noting it was a log "kit" home and inferior to rustic log construction. Respondent's witness countered Mr. Johnston's claims, describing his location for its premium high mountain and valley views. He also noted that there was no statistical proof that rustic log homes received a premium. The Board finds that the subject property's construction as a log "kit" home is not so inferior to a rustic log home construction that it would warrant an adjustment.

Petitioner calculated the value of his property based on a land value of \$72,649 and building value of \$439,292 for a total value of \$511,941. Petitioner seeks review of the individual components of the total valuation for assessment (the land component and the improvement component separately). The Board's review of individual components is prohibited by *Cherne v Boulder County Board of Comm'rs*, 885 P.2d 258 (Colo. 1994), and the Board cannot consider Petitioner's argument for valuing the component parts of the subject property.

Further, Respondent analyzed four sales of similar improved properties, which indicated an adjusted range of \$569,369 to \$634,509, concluding to the recommended lower value of \$615,000 for tax year 2019. The Board finds that Respondent's analysis relies on appropriate comparable sales and applies appropriate market appraisal methods.

After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that sufficient probative evidence and testimony was presented to prove that the subject property should be set at Respondent's recommended value.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$615,000. The Chaffee County Assessor is directed to change their 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-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 3rd day of April, 2020.

BOARD OF ASSESSMENT APPEALS

Drafting Board Member:



Sondra W. Mercier
Sondra W. Mercier

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