

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 75728
Petitioner: WILLIAM W. BAILEY v. Respondent: DELTA COUNTY BOARD OF EQUALIZATION	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 20, 2020, Debra A. Baumbach and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by John F. Baier, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

33919 B25 Road and 33923 B25 Road, Crawford, CO
County Schedule No.: R016231

The primary address of the subject property is 33941 B25 Road, Crawford, CO, according to the County Assessor. There are three additional addresses assigned to this parcel. The subject property includes several single-wide manufactured homes that are used for storage, multiple additional support buildings on a 35.15-acre site, and two residences. The first residence is a ranch style home built in 1914; it has an effective year built of 1955. This 1,131 square foot home is wood frame construction and has one bedroom and one bathroom. The second residence is a 640 square foot wood frame home over 1,200 square feet of unfinished carport space. It was built in 2001 and has an effective year built of 1998. The subject parcel does not have domestic water.

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$113,036
Petitioner's Requested Value:	\$55,000

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 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).

APPLICABLE LAW

For property taxation purposes, the value of residential properties must be determined solely by the market approach to appraisal. *See* Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, 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.

FINDINGS AND CONCLUSIONS

I. Petitioner's Claims

Petitioner testified to his belief that the five mobile home trailers on the property require asbestos mitigation, and claimed Respondent's valuation of the subject property should have deducted the cost of asbestos mitigation. Petitioner estimated that cost at \$10,000 per trailer or a total of \$50,000. Petitioner testified his estimate was based on a conversation with a person he knows who had to pay for asbestos mitigation for a similar mobile home. Petitioner disagrees with Respondent's claim that the 55% adjustment made by the Assessor to the property value was for the lack of domestic water plus any asbestos removal required. Petitioner claimed the Assessor did not know about the asbestos until Petitioner disclosed it after he received the Notice of Determination. Therefore, Petitioner argued the Assessor could not have adjusted the value for that factor. In response to questions, Petitioner testified he has not had professional tests conducted to determine if the manufactured homes on the subject property in fact have asbestos that will require mitigation, but he expects they do. Petitioner also confirmed his asbestos mitigation estimate is not based on a professional bid for removal.

Based on Petitioner's testimony, the Board finds that Petitioner's claim of the need for asbestos removal and the estimated cost are based on hearsay evidence only. The Board admitted this evidence, but cannot rely on it to establish asbestos removal costs.

II. Respondent's Value Analysis

Respondent presented expert testimony by Debbie Griffith, the Delta County Assessor, who testified in relevant part that Delta County had an active real estate market during the applicable base period and that property values increased approximately 65% during that period. The witness testified that when appraising the subject property, it was apparent the majority of the value was in the land. The Assessor concluded that most of the structures are of salvage or minimal value. Therefore, the witness used vacant land comparable sales to establish the land value as well as property sales with minimal structures to establish the overall property value. The witness testified a 55% downward adjustment to value was applied to the subject property for factors including the lack of domestic water and the cost to remove the older manufactured homes which may require asbestos mitigation. The Assessor testified she found no market support for lowering the subject property's value as a result of the lack of domestic water alone. She further testified she is not certain the manufactured homes have asbestos but many that age do.

The three vacant land comparable sales presented by Respondent range in land area from 28 to 40 acres. The sale prices ranged from \$175,000 to \$270,000, which are equivalent to a range of \$4,375 to \$8,929 per acre. The two improved sales presented were 35.01 and 40.29 acres in size and had prices of \$169,500 and \$294,000 per acre. After deducting small values for the improvements included in those two sales, the indicated prices for the land are \$154,365 and \$270,202 which are equivalent to \$4,409 and \$6,706 per acre. The Assessor considered positive and negative attributes of the five sales including, but not limited to, differences in overall location, topography, and access. After applying a 55% downward adjustment to the subject property to account for factors including the lack of domestic water and the cost of removal of several old

manufactured homes, the Assessor concluded to a value for the subject land of \$2,817 per acre, or a rounded total of \$99,000. To that figure, the Assessor added a depreciated total value of \$14,036 for all of the subject improvements resulting in a total actual value for the property of \$113,036. Based on the similarities in large acreage size, and overall location for each of these comparable sale properties and the subject property, the Board finds that these sales are appropriately representative of the subject property's value under the market approach. The Board finds Respondent has made a reasonable effort to account for the poor condition of the improvements on the subject property, including the possibility that the mobile homes on the site might require asbestos removal. The Board finds that after adjustments, Respondent's value is significantly lower on both a total price and price per acre than the five comparable sales presented.

The Board places more weight on Respondent's evidence than on Petitioner's evidence, primarily because of the comparable sales analysis presented and the large 55% deduction made from the subject's value for lack of water and anticipated removal of the mobile homes. Petitioner's speculation about the existence of asbestos and hearsay evidence as to the potential mitigation costs is not sufficient to persuade the Board additional adjustments to the value for possible asbestos mitigation. The Board further finds, in reliance on the testimony of the Assessor, that no further adjustment for the lack of domestic water at the subject property is supported.

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has failed to meet its burden of proving that the assigned value for tax year 2019 is incorrect.

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 15th day of December, 2020.

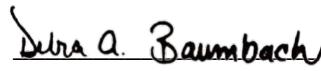
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

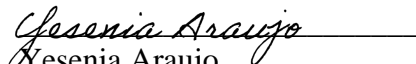



Louesa Maricle

Concurring Board Member:


Debra A. Baumbach
*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 order of the Board of Assessment Appeals.


Yesenia Araujo