

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76544</b>
Petitioner:  <b>Wayne Wells and Marion J. Wells,</b>  v.  Respondent:  <b>Garfield County Board of Equalization.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 18, 2020, Debra Baumbach and John DeRungs presiding. Petitioner Marion J. Wells appeared pro se on behalf of Petitioners. Respondent was represented by Katharine J. Knox, 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.

**STIPULATED FACTS**

The parties presented a stipulation at hearing to the value of the Agricultural Structure at \$3,030 and Agricultural Land at \$8,990. In this case, only the value of the Agricultural Residence remains in dispute.

**DESCRIPTION OF THE SUBJECT PROPERTY**

6691 County Road 309, Parachute, Colorado 81635  
 County Schedule No.: R270462

The subject property is classified as an agricultural residence on 186.4 acres located two miles south of Interstate Highway 70 in western Garfield County. That puts it in an unincorporated rural area known as Rulison, which is roughly midway (ten miles) between the communities of Parachute and Rifle. Built in 1979, it has a two level ranch style design consisting of a main level

of 1,612 square feet with three bedrooms and two baths and a 1,612 square foot unfinished basement.

The Agricultural Residence's actual values, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner and Respondent, are:

CBOE's Assigned Value:	\$311,950
Petitioner's Requested Value:	\$222,300
Respondent's Requested Value:	\$311,950

### **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), C.R.S.

### **APPLICABLE LAW**

For property taxation purposes, the value of an **agricultural residence** 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

In making her argument that the property had been overvalued, the Petitioner stressed the lack of services at her rural location when compared to what was available in the nearest communities of Parachute, Battlement Mesa and Rifle. Unfortunately, neither Respondent nor Petitioners found any nearby comparable sales in Rulison during the 24-month period that would support or refute any measurable impact on value for lack of services. Petitioner therefore presented no evidence on which the Board could rely to find in her favor on this point.

To advance her central concern that the subject was not valued fairly with respect to neighboring properties, the Petitioner applied adjustments to the actual improved value of her comparable sales, (as assigned by the assessor), rather than to the actual sales prices of the properties. However, there is no exception in state law to the requirement that actual sale prices be used in a market approach to reach a value conclusion for residential property.

Moreover, while Petitioner complained that the comparable properties' values she presented indicated a lower value should be assigned to the subject, she had little knowledge of the properties' specific attributes – on cross-examination she testified she was unaware of whether the sales suffered from negative influences that would have contributed to a decrease in their assigned value. The Board was therefore unable to assess whether the properties presented were similar to the subject (and Respondent's appraiser raised doubts as to whether Petitioner presented comparable properties). Having not used properly adjusted comparable sales to support her value contention, Petitioner's argument amounts to an equalization argument, which is not a proper means of evaluating the value of the property. *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997). Respondent presented expert testimony by Amber Knox, employed by the Garfield County Assessor's Office, who completed an appraisal in which she properly relied on the market approach. Ms. Knox testified in relevant part that she gave most weight to her most recent Sale 1, which after adjustment for various features provided an indication at the concluded value of \$346,000, rounded. It required the least overall adjustment of the five comparables mainly because its gross living area at 1,844 square feet was within 5% of subject's above grade square footage. Ms. Knox's appraisal supported the CBOE value.

The Board finds therefore that by failing to use actual sales data when it was called for by statute, the Petitioners have not met their burden of proving that the assigned value for tax year 2019 is incorrect. The CBOE value as to the Agricultural Residence shall remain at \$311,950. With the stipulations of the parties to the Agricultural Land value and the Agricultural Structure value, this results in a total value for the subject property of \$323,970).

## 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.

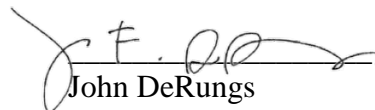
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*See* § 39-8-108(2), C.R.S. (2019) (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (2019) (rights to appeal on an abatement petition).

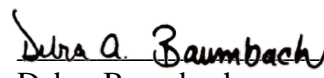
**DATED and MAILED** this 16<sup>th</sup> day of December 2020.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

  
John DeRungs

Concurring Board Member:

  
Debra 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.

*Gesenia Araujo*  
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Gesenia Araujo

