

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76553
Petitioner: F. RAYLENE OWEN, v. Respondent: ELBERT COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 4, 2021, Sondra Mercier and John DeRungs presiding. Petitioner F. Raylene Owen appeared pro se. Respondent was represented by Bartholomew Greer, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibit 1-5 and Respondent’s Exhibit A-I.

DESCRIPTION OF THE SUBJECT PROPERTY

40877 Red Fox Cir, Elizabeth, Colorado
County Schedule No.: R118150

The subject property is a single family residence on 30.823 acres in the Town of Elizabeth built in 1998. It has a one level ranch style design consisting of a main level of 2,758 square feet with two bedrooms and two and a half baths and an almost fully finished 2,146 square foot walk-out basement.

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:	\$825,865
Petitioner's Requested Value:	\$545,000
Respondent's Requested Value:	\$765,000

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, in this appeal, 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. (2020).

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

Petitioner reported that she had appealed the value of this property, for tax year 2017, and entered into a value agreement of \$545,000 with the Elbert County Board of Equalization. In the appeal before us today, Petitioner reported that no upgrades to her property had been made. She also provided photographs and cost estimates of nearly \$50,000 for needed repairs to her property. She testified in relevant part that because of these deficiencies, the value of her property had not changed.

Respondent presented expert testimony by appraiser Zach Trester, employed by the Elbert County Assessor's Office, who prepared a real estate appraisal of the property. He selected three comparable sales within the two-year data collection period from July 1, 2016 through June 30, 2018. By applying the county supported time adjustment of 0.8% per month (equivalent to 9.6% per year) to three comparable sales at this location, he showed that the value of properties at this location had increased in the range of from \$41,000 to \$138,000.

The Board finds that Petitioner relied on a previous value to establish a value for the current tax year instead of using a sales comparison approach as required. To the extent Petitioner provided sales data in her "Exhibit Comp Chart" exhibit, the Board was more convinced by Respondent's sale data, analysis, and conclusions. Consequently, the Petitioner has not met her burden of proving that the assigned value for tax year 2019 is incorrect.

However, Respondent presented evidence in support of a lower value than the CBOE-assigned value below, and requested the Board assign that value to the subject property for tax year 2019. The Board finds Respondent's valuation of the property at \$765,000 for tax year 2019 was supported by the evidence, and orders that the value of the subject property be reduced to \$765,000.

ORDER

The petition is **GRANTED** on the basis of the Board's adoption of Respondent's recommended value. The Elbert County Assessor's Office is ordered to update 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.

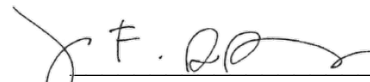
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); see also § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 28th day of April, 2021.


BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

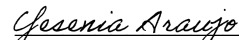



John DeRungs

Concurring Board Member:


Sondra Mercier
*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