

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76573
Petitioner: ANTHONY J. RODRIGUEZ and LINDA D. RODRIGUEZ, 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 Amy J. Williams presiding. Petitioner Linda D. Rodriguez appeared pro se. Respondent was represented by Bartholomew S. Greer, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1 through 5 and Respondent’s Exhibits A through J.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 23895 High Timber Lane, Agate, CO 80101
County Schedule No.: R105117

The subject property is a ranch-style, single family residence with a partial, unfinished basement, constructed in 2004. The residence is 2,931 square feet with a 2,202 square foot unfinished walkout basement. The home is located on a 40.12-acre parcel in Waters Subdivision in unincorporated Elbert County. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below, the values requested by the parties, and the Board’s concluded value, are:

CBOE’s Assigned Value:	\$ 398,262
Respondent’s Recommended Value:	\$ 380,000
Petitioner’s Requested Value:	\$ 330,000
Board’s Concluded Value:	\$ 380,000

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, 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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

FINDINGS AND CONCLUSIONS

Petitioners offered evidence within Exhibit 4 regarding seven residential properties which Petitioner felt were similar to the subject property. Three of the residential properties identified in Exhibit 4 were sales which occurred within the appropriate data collection period. In each case, Petitioners compared the value assigned by the Assessor to the subject's assigned value, and in the case of the three sales, also compared the sale price to the Assessor's assigned value. It was Ms. Rodriguez' testimony that the seven residential properties offered as similar to the subject within Exhibit 4 were assigned values substantially lower than the subject by the Assessor. Ms. Rodriguez also testified that the three properties within Exhibit 4 which sold had assigned values which were significantly lower than the sale price.

Petitioners request a reduction from the Assessor's actual value to \$330,000.

Respondent's witness, Mr. Zachary Trester, an Ad Valorem Appraiser employed by the Elbert County Assessor's Office, presented an appraisal report concluding to a final value opinion of \$380,000. Mr. Trester provided three comparable sales ranging in sale price from \$399,500 to \$546,000 and in size from 2,206 to 3,216 square feet of above grade living area. The comparable sales were adjusted for sales concessions and time (market conditions) to produce sale prices as of the valuation date of June 30, 2018 from \$425,867 to \$568,932. As the subject is classified as agricultural for property tax purposes, an estimated contributory land value was first deducted from the above adjusted sale prices. The comparable sales were then adjusted for effective age, above grade living area, basements (style, size and design), garage size, bedrooms, bathrooms, deck/balcony/porch/terrace, concrete/paving and outbuildings. After the above adjustments the comparable sales ranged from \$378,254 to \$455,102. No written reconciliation of value was presented; however, the witness concluded a final market value for the residential improvements of \$378,859. After adding the calculated agricultural land value of \$1,141, the total value for the subject was concluded to be \$380,000.

While Petitioners presented information on similar residential properties, only three of the properties were sales. Petitioners did not present evidence or testimony necessary to adjust said comparables relative to the subject in order to appropriately support their requested value. Additionally, Petitioner's analysis and testimony did not recognize or account for agricultural classification and the corresponding effect it has on the land value assigned by the Assessor.

After careful consideration of the exhibits and testimony, the Board finds Petitioners have failed to meet the required burden of proof. The Board finds Petitioners provided insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. However, Respondent's witness provided an appraisal report detailing the factors and conclusions leading to a supportable opinion of value lower than the CBOE assigned value, and requested that the Board adopt \$380,000 as the correct value for the subject property for tax year 2019. The Board will do so, and will grant the petition on that basis.

ORDER

The petition is **GRANTED**. 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 30th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Amy J. Williams



Concurring Board Member:

Sondra W. Mercier
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
Yesenia Araujo