

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76618
Petitioners: NADINE ABERCROMBIE and ALTON ABERCROMBIE, v. Respondent: SAGUACHE COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on May 4, 2020, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioners appeared pro se. Respondent was represented by Ben Gibbons, Esq. Petitioners are protesting the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioners’ Exhibits 1-7 and Respondent’s Exhibits A-D, E1, E2 and F.

DESCRIPTION OF THE SUBJECT PROPERTY

12025 CO RD 42-K, Del Norte, Colorado
Saguache County Schedule No. 4751-032-00-004

The subject is an 80-acre parcel of vacant land. A partial camper, which is considered a temporary structure, and a shipping container are stored on the property. There is no power, water, or septic system to the temporary structure.

The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) and Petitioners’ requested value are:

CBOE’s Assigned Value:	\$107,280
Petitioners’ Requested Value:	\$ 1,138

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. Colo. 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, a 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 board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.*

APPLICABLE LAW AND AUTHORITATIVE SOURCES

In valuing residential properties for tax purposes, value must be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(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, 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.

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Co. v. Arapahoe Cty. Bd. of Equalization*, 813 P.2d 768, 770 (Colo. App. 1990). Furthermore, equalization evidence, by itself, does not satisfy the requirement to provide comparable sales with appropriate adjustment. As the Colorado Supreme Court stated in *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 18 n.12 (Colo. 1997):

While the valuation of property similarly situated is credible

evidence at trial pursuant to § 39-8-108(5)(b), C.R.S. (1994), a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider equalization evidence as support for a value determined using the market approach. *See id.*

Colorado Revised Statutes section 39-1-102 (2019) provides the following definitions:

(1.6)(a) “Agricultural land”, whether used by the owner of the land or a lessee, means one of the following: (I)(A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned that was used the previous two years and presently is used as a farm or ranch, as defined in subsection (3.5) and (13.5)...

(3.5) “Farm” means a parcel of land which is used to produce agricultural products that originate from the land’s productivity for the primary purpose of obtaining a monetary profit.

(13.5) “Ranch” means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit...

(14.3) “Residential improvements” means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use. The term also includes a manufactured home as defined in subsection (7.8) of this section, a mobile home as defined in subsection (8) of this section, and a modular home as defined in subsection (8.3) of this section.

(14.4) (a) “Residential Land” means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon...

FINDINGS AND CONCLUSIONS

After consideration of the testimony and exhibits presented, the Board places significant weight on the following findings and conclusions.

Petitioner, Mr. Alton Abercrombie, testified that the subject land was rocky and not productive for grazing purposes. He reported that casual grazing from the L-Cross Ranch occurred on the subject, but there was no lease agreement in place. Petitioners argued that the subject was not taxed equally to other similar properties; and, identified adjacent Lots 18 and 19 in the Lime Creek Estates as examples. They purchased the subject site in December 2017 for \$111,000, as indicated by a Warranty Deed. (Ex. F, p. 3.) Petitioners are requesting an actual value of \$1,138 based on the assigned values placed on Lots 18 and 19 by the Saguache County Assessor.

Respondent's witness, Jacqueline Stevens, consultant for the Saguache County Assessor's Office, reported that she was familiar with the subject property as well as the adjacent lots. Ms. Stevens reported that all owners of property in the Lime Creek Estates had signed long-term leases to allow grazing by L-Cross Ranch. This includes Lots 18 and 19, which are adjacent to the subject, but within the subdivision. With a grazing lease in place, the lots located in Lime Creek Estates have been classified as agricultural land and are eligible for favorable valuation for tax purposes. The subject property does not have a grazing lease in place. Petitioners are not requesting an agricultural classification, nor would they qualify for that classification.

The temporary structure located on the site does not meet the definition of a residential improvement. Petitioners presented no evidence that the partial camper is designed for use or is actually used as a residence. Petitioners are not requesting a residential classification, nor would they qualify for that classification.

Petitioners did not provide comparable sales information for consideration by the Board. The Board found Petitioners' actual purchase of the subject within the statutory base period compelling as an indication of value. The purchase price of \$111,000 exceeds the CBOE's assigned value of \$107,280. There was no evidence provided to suggest that the actual sale was not arms-length or representative of the market. The Board finds that the assigned value is supported by evidence from the market.

Based on the evidence presented, the Board finds that petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

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.


Section 39-8-108(2), C.R.S. (2019).

DATED and MAILED this 12th day of May, 2020.


BOARD OF ASSESSMENT APPEALS



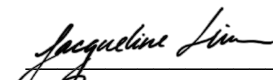
Drafting Board Member:


Sondra W. Mercier

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 decision of the Board of Assessment Appeals.


Jacqueline Lim