

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76679
Petitioner: CAROLYN PISEL, v. Respondent: ELBERT COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on August 18, 2020, Sondra Mercier and John DeRungs presiding. Petitioner Carolyn Pisel 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 Exhibits 1-5 and Respondent’s Exhibits A-J.

DESCRIPTION OF THE SUBJECT PROPERTY

12995 County Road 102 in unincorporated Elbert County 80106
County Schedule No.: R115625

The subject property is classified as an agricultural residence on 60 acres of agricultural grazing land located two miles east of the Town of Kiowa in central Elbert County. It has a two level ranch style design consisting of a main level of 1,772 square feet with three bedrooms and two and a half baths and a 1,760 square foot basement with 1,180-SF of finish built in 2000.

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

CBOE's Assigned Value:	\$434,415
Petitioner's Requested Value:	\$345,000
Respondent's Requested Value:	\$395,000

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 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 that her three actual sales comparables (including the last sale of the subject property for \$530,000 in March of 2016) were more proximate than those used by Respondent, and had more similar

location influences as compared to the subject property. The Board recognizes that where sales activity is limited, that including the last sale of the subject property is not only justified but preferred (as long as it occurred within a five year period preceding the appraisal date). A recent sale of the subject property often provides the best indication of its current value, but adjustment for market conditions must be considered.

In this case, Petitioner made unsupported adjustments to the \$530,000 sale price for agricultural land at \$4,000 per acre and adopted the County's value for outbuildings at \$12,308 to reach an indication at \$277,692. Using Respondent's conclusion of \$3,000 per acre of agricultural land, which would add \$60,000 to that indication brings an indication close to what Petitioner has requested at \$345,000. But Petitioner failed to make an adjustment for improved market conditions in the 27 months between the last sale of the subject and the June 30, 2018 date of value at issue in this case. The Board finds therefore that Petitioner has not met her burden of proving that the assigned value for tax year 2019 is incorrect.

Respondent presented expert testimony by Zach Trester, employed by the Elbert County Assessor's Office, who prepared a real estate appraisal of the property. He testified in relevant part that the last sale of the subject property at \$530,000 in March of 2016 fell a few months outside the two-year data collection period he used from July 1, 2016 through June 30, 2018. However, by applying the supported time adjustment of 0.6% per month (equivalent to 7.2% per year) for this location to the last sale he also testified that the resulting value indication slightly exceeds the County's requested value of \$395,000. Using more recent sales comparables in a market approach, that was the value conclusion reached in his appraisal. A value of \$180,000, or \$3,000 per acre, for the 60 acres of agricultural land that was subtracted from his comparable sales' prices to arrive at an indicate of value for the subject residence is supported as shown in his Exhibit B, page 3. The Board finds Mr. Trester's appraisal supported his value for the subject property of \$395,000. This value is lower than the value assigned by the Board of Equalization below, and the Board will adopt it at the request of Respondent.

ORDER

The petition is **GRANTED**, on the basis of the lower value requested and supported by Respondent. 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.

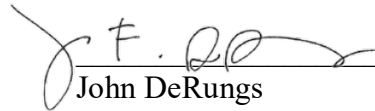
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); see also § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 26th day of April, 2021.


BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

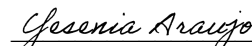



John DeRungs

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