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| <b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br>1313 Sherman Street, Room 315<br>Denver, Colorado 80203          | <b>Docket No.: 76932</b> |
| Petitioner:<br><br><b>DENNIS R. HOOVER,</b><br><br>v.<br><br>Respondent:<br><br><b>GUNNISON COUNTY BOARD OF EQUALIZATION.</b> |                          |
| <b>FINAL AGENCY ORDER</b>   |                          |

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 17, 2020, Diane M. DeVries and Samuel M. Forsyth presiding. Petitioner Dennis R. Hoover appeared pro se. Respondent was represented by David Baumgarten, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits 1-16 and Exhibit 17 (Reply Documentation) and Respondent’s Exhibit A and B (Reply Documentation).

**DESCRIPTION OF THE SUBJECT PROPERTY**

161 Crest Drive , Cimmaron CO 81220  
County Schedule No.: R016358

The subject property is a single family residence. It is log construction built in 2003. The subject site is 1 acre. The home has 1,612 square feet. There is a 378 square feet attached garage and a 600 square feet detached garage. The construction quality is average. The condition is average. 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:          | \$ 275,080 |
| Respondent’s Recommended Value: | \$ 255,000 |
| Petitioner’s Requested Value:   | \$ 230,080 |

## **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. (2019).

## **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. (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.

## **FINDINGS AND CONCLUSIONS**

Petitioner raised concerns on how the Gunnison County Assessor treated the personal property component of the subject as reflected in the \$265,000 sale price of the subject in September, 2016. The home was fully furnished at the time of the sale. In addition to the furnishings, the sale included an ATV, snow blower and tools. Petitioner reported the value of the items of personal property to the Assessor as \$30,000, a figure that at the time the Assessor agreed to. Petitioner provided to the Board a personal property inventory and estimated replacement value of \$81,524. *See* Exhibits 2, 9. For the 2019 tax year, the Assessor adjusted the value of the personal

property included in the 2016 sale to \$10,000. Petitioner asks this Board to order the adjusted sale price to reflect \$30,000 worth of personal property, as agreed to previously. Petitioner believes that the change in the value of the personal property by the Assessor is unsupported and illegal.

Petitioner also expressed doubt about Respondent's \$255,000 actual value, as it is not in line with comparables provided by Petitioner in Exhibit 5. Comparative data of the comparable sales included address, month and day of sale, size difference between the comparables and the subject, and sale price. Petitioner further states that the notice of hearing for the Gunnison County Board of Equalization hearing was not provided in a timely manner, and asserted other objections about the conduct of the hearing, which he contended rendered the decision of the CBOE void. He also questioned the inclusion of a "fully furnished home" in the adjusted sale price of the subject. Finally, in Exhibit 7, Petitioner provides a list of 13 "comparable home" sales in the subject subdivision, the actual value of the sales determined by the Assessor, and the adjusted sale prices of the comparables. Petitioner stated that the ratio of the adjusted sale price of the subject relative to its NOV value of \$301,030 was 1.18, which is higher than all but one of the other 13 sales analyzed, and therefore inequitable.

Respondent presented William Spicer as witness. Mr. Spicer holds an Ad Valorem Appraiser license issued by the state of Colorado. He is employed by the Gunnison County Assessor's office as Senior Appraiser Analyst. Mr. Spicer authored and testified to a Restricted Appraisal Report for the subject property. Applying only the sales comparison approach to value as prescribed by statute, the appraiser identified 5 comparable sales from the subject subdivision. Dates of sale ranged from July 7, 2016 to November 1, 2017. The subject living area is reported to be 1,612 square feet – the comparables range in size from 1,464 square feet to 1,898 square feet. After adjustments for personal property, the sale prices of the comparables ranged from \$208,000 to \$295,000. The appraiser adjusted for living area and garage – the sale comparables were similar enough in attributes such as age of construction, location, and condition that no other adjustments were warranted. After adjustments, the value of the comparables ranged from \$248,900 to \$257,060. The Respondent's reconciled to a value of \$255,000 for the subject, lower than the CBOE-assigned value.

The Board finds the valuation evidence of Respondent, in particular the testimony and appraisal of Mr. Spicer, more persuasive than that of Petitioner. The Board's review of the comparable sales and adjustments leads to the conclusion that the value determined by Respondent's expert's appraisal is appropriate. Regarding the personal property that was included in the 2016 sale of the subject, the Board finds arguments regarding the value of the personal property to be obviated by the sales comparison grid analysis. Only two of the sales required adjustment for personal property included in the sale. Neither of these sales included fully furnished homes – the personal property was for small items.

As to Petitioner's concerns about the CBOE proceeding, as noted during the hearing, the Board of Assessment Appeals hears appeals from CBOE decisions in a de novo trial, meaning an entirely new consideration of the valuation controversy, including new evidence. How hearings are scheduled and conducted prior to the BAA hearing is not relevant to the resolution of this appeal. Also, the Board has no authority as to how the effective 2016 sale price of the subject was determined by the Assessor. In this case, the effective sale price is irrelevant. The subject's value

at \$255,000 was substantiated by the comparables selected, adjusted and reconciled by Mr. Spicer. The Board concurs with Respondent that the comparable sales adjustment grid validates the value of the subject, irrespective of the personal property included in the 2016 sale of the subject.

Finally, the Board finds that Petitioner's equity concern regarding the sales ratio of several of the neighborhood sales is not borne out by the evidence. The Board has reviewed the sales ratio data provided in Petitioner's Exhibit 7. Petitioner's data presentation is in error in one important aspect. The sales ratio of the subject property is based on Assessor's actual value determination divided by the adjusted sale of the subject property which yields a ratio 1.18. The Assessor's actual value determination based on the appraisal presented at this hearing is \$255,000. This results in a calculated sales ratio of 1.00. The average sales ratio of the remaining sales is also 1.00.

### **ORDER**

The petition is **GRANTED**, due to the reduction of value recommended by Respondent. Respondent is ordered to reduce the 2019 actual value of the subject property to \$255,000. The Gunnison County Assessor is directed to change 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 16th day of March, 2021.

**BOARD OF ASSESSMENT APPEALS:**



Drafting Board Member:

Samuel M. Forsyth

Concurring Board Member:

Diane M. DeVries

*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.

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Yesenia Araujo