

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 78948</b>
Petitioner:  <b>KURT M. CASSETT,</b>  v.  Respondent:  <b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on November 9, 2020, Diane M. Devries and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Rebecca P. Klymkoswky, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits 1 through 7 and Respondent’s Exhibits A and B.

**DESCRIPTION OF THE SUBJECT PROPERTY**

20402 Pleasant Park Road, Conifer CO 80433  
 County Schedule No.: 300214743

The subject property is a single-family residence located on a 6-acre site. The 6-acre site is classified as agricultural, hay meadow use. The residential improvements, including home and outbuildings are classified as residential. The land value and classifications are not in dispute. The value of the residence and outbuildings are disputed. The residence is a split-level home constructed in 1964. The home has 1,200 square feet of above-grade square footage and 559 square feet on the lower level, of which 419 square feet is finished. From photos provided by the Petitioner, it is apparent that the finished area of the lower level has finished walls but no ceiling finish. The home has 3 bedrooms, 1 full bath, 1 ¾ bath, and 1 ½ bath. The property has a 1,200 square foot metal shop building, constructed in 2013. The subject property’s actual value for the

residence and outbuildings, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Respondent and Petitioner, are:

	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
CBOE’s Assigned Value:	\$ 1,830	\$279,025	\$ 280,855
Respondent’s Recommended Value:	\$ 1,830	\$265,000	\$ 266,830
Petitioner’s Requested Value:	\$ 1,830	\$163,941	\$ 165,771

### **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.

### **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

Petitioner's petition to the Board of Assessment Appeals is that the current value of the subject improvements and the trajectory of value increases in the past are unfair. Petitioner also believes that the value is inaccurate as it does not reflect the fair condition and lack of updating to the improvements. Petitioner provided no appraisal of the subject property. Evidence was presented that the Petitioner has done little or no upgrades to the subject's improvement since he purchased the property, yet the actual value has continued to rise. The County asked the Petitioner to allow an interior inspection to confirm the condition of the improvements. It is undisputed that the Petitioner refused the request for an interior inspection. Petitioner's exhibits and testimony provided historical assessments of the subject's improvement values relative to similar homes in the marketing area of his property. The value increases have been greater than those experienced by neighboring properties. The Petitioner presented evidence that the current value of the subject improvements as compared to the previous value (in the previous valuation cycle) is greater than the increases in values of similar properties in the subject neighborhood. The Petitioner had appealed the value in the previous valuation cycle and negotiated a stipulated value with Jefferson County. Petitioner believes that the stipulation was inappropriately ignored by the county. Petitioner pleads that the Board of Assessment Appeals accept the 2019 and 2020 stipulated value of \$199,000 as binding and that a factor of .88 be applied to bring the subject value in line with neighboring values.

Respondent presented as witness Tammy J. Crowley. Ms. Crowley is employed by the Jefferson County Assessor's office. Ms. Crowley holds a Certified General Appraiser license. Ms. Crowley testified to an Appraisal Report on the subject property that she authored. The Appraisal identified several comparable properties. For each of the comparable properties, the appraiser extracted the land value attributable to the sale prices of the properties to arrive at the value of the improvements only. The time of sale of the four comparables ranged from August of 2016 to April of 2018. The improvements size of the comparables ranged from 808 square feet to 1,211 square feet. Adjustments for each comparable sale included change in market conditions (time), construction/condition, year built/effective year, bath count, above grade square footage, garden level size/garden level finished square footage, basement size/basement finished square footage, heating/cooling, storage/equipment shop, covered patio/enclosed porch, and wood deck. After adjustments, the concluding values ranged from \$261,012 to \$294,251. Ms. Crowley reconciled the adjusted value conclusion of the improvements and outbuildings to \$265,000. To this concluded value, the appraiser added the agricultural land value of \$1,830 for a total value of \$266,830. The Jefferson County Board of Equalization value is \$280,855.

## CONCLUSION

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2019 is incorrect. The Petitioner provided no evidence to establish the market value of the subject property. The Board's determinations are required to have a reasonable basis in the law. *Home Depot USA, Inc. v. Pueblo County Bd. of Com'rs*, 50 P.3d 916, 920 (Colo. App. 2002).

Petitioner’s appeal on the basis of equity lacks appropriate foundation. The Board can only consider an equalization argument as support for the value determined using the market approach. *Arapahoe County Bd. Of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). For an equalization argument to be effective, Petitioner must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach. As that evidence and testimony was not presented, the Board gave limited consideration to the equalization argument presented by Petitioner.

As to Petitioner’s concerns about values set in previous appraisal cycles and previous stipulations of value, 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 values were set and stipulations entered into prior to the BAA hearing is not relevant to the resolution of this appeal.

The Board finds that Petitioner’s refusal to allow an interior inspection of the subject, especially when the quality and condition of interior finish is a part of the Petitioner’s appeal, calls into question the credibility of the Petitioner’s arguments and overall case.

The Board finds that the value determined by the Respondent to be credible and well supported. The Board finds that the Respondent adequately and appropriately addressed the valuation issues brought up by the Petitioner. The Board concludes that the Respondent’s determination of quality of construction and condition of improvements assigned to the subject is appropriate. Consequently, the comparable selection of the Respondent and adjustments to the comparable sale are found to be appropriate.

Based on evidence presented by Respondent in support of \$266,830, the Board finds that the subject property was incorrectly valued by the Jefferson County Board of Equalization below.

### **ORDER**

The petition is **GRANTED**. The Jefferson County Assessor is ordered to reduce the value of the subject to \$266,830 in the following allocations:

Land Value	Agricultural Class	\$ 1,830
Improvements Value	Residential Class	<u>\$265,000</u>
Total Value		\$266,830

### **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.

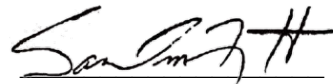
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*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).

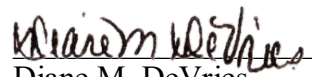
**DATED and MAILED** this 15th day of April, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

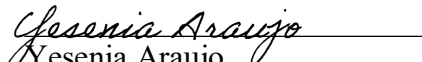
  
Samuel M. Forsyth

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.

  
Yesenia Araujo