

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>NEIL S. MILLER,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 78983</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 1, 2020, Gregg Near and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Jason Soronson, Esq. Petitioner is protesting the 2019 actual value of the subject property.

The Board accepted Petitioner’s Exhibit 1 and Respondent’s Exhibit A. Ms. Laura L. Burtschi was accepted as an expert witness.

Subject property is described as follows:

**13929 Sunburst Dr.
Littleton, CO 80127
Jefferson County Account Number 3001196953**

The improved subject property is a one level residence considered to be fair quality per County records. The home was originally constructed as a pole barn and later converted to a residence. The improvement was constructed in 2002 and contains 2,040 square feet of living area. Interior finish includes 3 bedrooms, 1 full bath, 1 three quarter bath, a fireplace and in-floor radiant heat. There is an attached 1,160 square foot garage. The exterior of the home consists of pre-fab metal siding and a metal roof. The home is located on 37.44-acre site with steep and treed terrain. The property is accessed by a private road that is primarily maintained by the Sampson Road Home Owners Association.

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:	\$471,200
Respondent’s Recommended Value:	\$471,200
Petitioner’s Requested Value:	\$400,000
Board’s Concluded Value:	\$471,200

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 or CBOE’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.* 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.

EVIDENCE PRESENTED BEFORE THE BOARD

Petitioner, Mr. Neil S. Miller, testified his disagreement with the Assessor is related to three items: access, quality and the disparity between the Assessor's valuation and his actual purchase price of the home for \$280,000 as of March 23, 2010. Regarding access the Petitioner stated the subject property is reached by 3 miles of private road that is not passable in the winter by a 2-wheel drive car. The access road has 700 feet of elevation gain with a 15% grade that is too steep for today's standards. Maintenance of the road is the responsibility of the Sampson Road Home Owners Association. Mr. Miller testified the Association's charge for maintenance is thousands of dollars per year; the road is normally in disrepair and is often iced over in the winter.

Petitioner describes the subject improvement as a converted pole barn finished with the cheapest quality materials and poor craftsmanship. Mr. Miller maintains the pipes regularly freeze in the winter, the insulation is inadequate, cracks in the walls allow rodent infestation and the kitchen is so poorly constructed that complete replacement is required. The Petitioner also testified the home has no foundation and poor quality mechanical systems. In support of Mr. Miller's value estimate, 16 sales derived from the Multiple Listing Service were presented. The comparable sales ranged from \$219,000 to \$400,000 in sale price; from 808 to 2,324 in square feet; from 1920 to 2001 in age and from 1 to 10.31 acres. No confirmations were presented and no adjustments were applied.

Mr. Miller maintains the purchase price in 2010 of \$280,000 has not been satisfactorily considered by the Assessor.

Based upon Petitioner's research Mr. Miller contends the proper value for his home is a combination of the land value at \$180,000 and the cost of a new pole barn at \$200,000 for a total of \$380,000. Given an estimated appreciation rate of 1.1% during the base period, Petitioner offered a settlement for \$400,000.

Respondent presented the expert testimony of Ms. Laura L. Burtschi, a licensed Ad Valorem appraiser employed by the Jefferson County Assessor's office. Ms. Burtschi produced an appraisal report concluding to a final value opinion of \$573,700. The witness considered five comparable sales ranging in sale price from \$273,500 to \$720,000 and in size from 1,377 to 2,027 in above grade living area. The comparables ranged from 5.27 to 35.25 acres. The comparable sales were adjusted for time (market conditions) and for sale conditions to produce adjusted sale prices as of the valuation date of June 30, 2018 ranging from \$306,096 to \$776,748.

The comparable sales were then considered and adjusted for significant property features affecting the sale prices. The sales were adjusted for construction quality, size, heating systems, number of bathrooms, basement design and finish, porches, patios and decks, garage size, site size, access and view. After the above adjustments, the comparable sales ranged from \$526,884 to \$826,213. The witness stated the comparables provide a reliable range of value upon which the final estimate of value is based. Ms. Burtschi concluded to a market value opinion of \$573,700.

THE BOARD'S FINDINGS AND CONCLUSIONS

The Board first responds to the three items Petitioner stated were his primary concern: access, quality and failure to consider Petitioner's purchase price in 2010.

Regarding Petitioner's claim that Respondent did not give proper attention to the limitations caused by the access to the property, the Board does not find this contention to be credible. It is not at all unusual to find properties that are accessed on privately maintained roads. In fact, as testified to by Petitioner, maintenance of this road is the responsibility of at least two Home Owner's Associations, the expenses of which are rightfully shared by the users. If Petitioner's complaint revolves around this contention, relief should be sought from the HOA's, not from the BAA. Petitioner's claim is further unconvincing by Respondent's witness considering and analyzing the sale of 13679 Sunburst Drive for \$720,000 a property nearly next door to the subject sharing the same access limitations as are claimed for the subject. The Board also notes Respondent's witness reported three sales with either "fair" or "poor" access.

Petitioner maintains Respondent did not adequately recognize the poor quality of the subject improvements. While the Board agrees the subject, a converted pole barn, is unique, Respondent's witness properly made efforts to identify properties in the market area, such as manufactured homes, that face buyer resistance. Further, the Board examined the 17 sales provided by Petitioner in support of his position. The sales are only marginally similar to the subject; the majority of these sales are far smaller than the subject, significantly older and on sites nowhere near the 37.44 acres of the subject.

The Petitioner puts forward the purchase price of the subject in 2010. The seller for this transaction was the Federal National Mortgage Association. The sale does not reflect the actions of a seller as defined in the definition of market value. No evidence was put forward by Petitioner to rebut this fact.

In contrast, Respondent's appraiser provided a credible appraisal report written to the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser addressed Petitioner's claims in an acceptable appraisal report as well as in testimony.

After careful consideration of the exhibits and testimony, the Board finds Petitioner has failed to meet the required burden of proof. The Board finds Petitioner provided insufficient probative evidence 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).

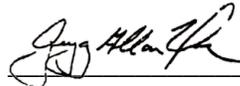
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

DATED and MAILED this 25th day of January, 2021.

BOARD OF ASSESSMENT APPEALS



Gregg Near

Concurring Board Member:



Samuel M. Forsyth

*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.

Yesenia Araujo

Yesenia Araujo

