

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 79312</b>
Petitioner:  <b>FISHBEIN FAMILY REAL ESTATE LLC,</b>  v.  Respondent:  <b>JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on February 23, 2021, Samuel Forsyth and John DeRungs presiding. Donn Fishbein, general partner of Fishbein Family Real Estate LLC, appeared on behalf of the Petitioner. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner appeals the actual value of the subject property for tax year 2019, seeking an abatement or refund.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A.

**DESCRIPTION OF THE SUBJECT PROPERTY**

1448 Kerr Gulch Road, Evergreen, Colorado  
County Schedule No.: 300182196

The subject property is a single family residence in the Pinedale Ranch subdivision in the Evergreen area. Built in 2008 as a “spec” home, it is in a ranch style on almost 10½ acres. It has a 3,280-SF main level and a 3,257-SF fully finished walk-out basement and an attached garage.

The subject property’s appealed value, assigned by the County Board of County Commissioners (“BOCC”) below, and the values requested by Petitioner and Respondent are:

BOCC’s Assigned Value:	\$1,682,184
Petitioner’s Requested Value:	\$1,400,000
Respondent’s Requested Value:	\$1,682,184

## **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 county board'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 proceeding below may be presented to this Board for a new and separate determination. *Id.* However, in this case, the Board may not impose a valuation on the property in excess of that set by the BOCC. § 39-8-108(5)(a), C.R.S. (2021).

## **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 AND CONCLUSIONS**

Petitioner objected to the percentage increase in the value of his property when compared with a prior tax year. Mr. Fishbein presented the testimony of Myra Purkey, a real estate agent with many years' experience in the Evergreen market, who offered evidence of comparable sales. However, only one of these sales, at 4460 Hilltop Road, occurred prior to the effective value date and could be admitted as valuation evidence. No adjustments were made to this sale's sale price.

Respondent presented expert testimony by Laura Burtschi, an appraiser employed by the Jefferson County Assessor's Office, who prepared a real estate appraisal of the property. Like Ms.

Purkey, Ms. Burtschi selected 4460 Hilltop Road as a sale comparable – as her Sale 4. However, she made a significant adjustment to the sale price in an upward direction, mainly for improved market conditions since it sold in July 2016. She calculated and applied a well-supported time adjustment from data in the Evergreen area of 0.7% per month (equivalent to 8.4% per year), resulting in a total adjustment of \$230,230. That adjustment alone makes up most of the difference between the parties’ recommended values for the subject. Ms. Burtschi made other minor adjustments to the sale price of 4460 Hilltop Road, for instance for the larger 15-acre site and smaller garage.

Petitioner argued that the County had raised the subject’s value more than similarly situated properties, which can be considered an equalization argument. Equalization, the act of raising or lowering the total valuation placed on a class or subclass of property within a designated territorial limit, does not account for the specific attributes of individual properties and, thus, is not a proper valuation method for an individual property. The assessor’s valuation of similar property, similarly situated, may be considered to be credible evidence, admissible to assist the Board in deciding issues before it. § 39-8-108(5)(b), C.R.S. However, the Board may only consider such an equalization argument as support for the value of the subject property once the subject property’s value has been established using a market approach, and if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were correctly valued, by application of the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997). In this case, Petitioner presented no such evidence. To the extent 4460 Hilltop Road was referred to by Petitioner as an equalization comparable, its value did not provide any support for lowering the value of the subject property, and in fact provided support for the County-assigned value, as explained above.

The Board finds that due to its selection of inadmissible sales data outside the base period, and the lack of support for its asserted lower value provided by the one admissible unadjusted comparable sale, the Petitioner was unable to prove that the assessor’s valuation was incorrect 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.

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 June 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



John F. DeRungs

Concurring Board Member:



Samuel 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 order of the Board of Assessment Appeals.

  
Casie Stokes