

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79418
Petitioner: ROSS BACHOFER, v. Respondent: WELD COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on February 4, 2021, Amy Williams and Valerie Bartell presiding. Petitioner Ross Bachofer appeared pro se. Respondent was represented by Karin McDougal, Assistant County Attorney for Weld County. Petitioner protests the actual value of the subject property for tax year 2020.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1 through 6, and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 7525 U.S. Highway 85, Fort Lupton, CO 80621
County Schedule No.: R5270886

The subject property is a single-family residential property. 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:	\$ 227,000
Petitioner’s Requested Value:	\$ 100,000
Board’s Concluded Value:	\$ 227,000

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 or classification 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 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.

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2020, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

FINDINGS AND CONCLUSIONS

The subject property is a single-family residential property situated on 6.361 acres of land in Weld County, Colorado. Approximately 2.2 acres of the subject are in a floodway, and approximately 2.6 acres of the subject are in a flood plain, including about one-third of the single-family residence. The dispute between the Petitioner and Respondent centers around the valuation of property located within a flood way and flood plain.

Petitioner provided exhibits documenting the flood impact to the subject property due to mining activity upstream, and increased stream flows year over year. According to aerials provided by Petitioner and Respondent, portions of the South Platte River traverse the subject. Petitioner testified that although the property has always had increased flood risk due to the proximity to the South Platte River, flooding has become increasingly frequent since 2004, flooding 15 times since then. Petitioner did not provide comparable sales to support Petitioner's requested value.

Respondent provided the testimony of licensed Assessor's Office appraiser Duane Robson, who testified to Exhibit A, an appraisal of the subject property. The appraisal accurately describes the portions of the property located within a flood zone and floodway. Exhibit A provided four comparable sales, two of which were partially located within a flood zone, but none within a floodway. Respondent's witness testified that he searched for, but was unable to identify any comparable sales within a floodway. Therefore, the Respondent's witness valued the land not located in the floodway and performed adjustments to the comparable sales based on this factor. Mr. Robson also placed no value on the subject's below grade area, which appeared to be impacted by the regular flooding.

The Board concludes that Mr. Robson adequately considered the subject's location within the floodway, as well as flood damage to the subject basement area. Mr. Robson identified market comparable sales located within a flood plain, assigned zero value to the subject's area located in a floodway, and assigned zero value to the subject's basement area. While the Board is sympathetic with Petitioner's assertion that mining operations upstream have led to a diminution of value for the subject, the Board finds that the county has adequately demonstrated the assessed value for the subject, factoring in the increased flooding hazards. This value supports the CBOE value assigned below.

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 29th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Valerie C. Bartell

Concurring Board Member:



Amy Williams

*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