

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79487
Petitioner: ELAINE VELASQUEZ, v. Respondent: COSTILLA COUNTY BOARD OF COUNTY COMMISSIONERS.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 24, 2021, Samuel Forsyth and John DeRungs presiding. Petitioner Elaine Velasquez appeared pro se. Respondent was represented by Edwin J. Lobato, Esq. Petitioner appeals the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-5 and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

21456 County Road L.7, Chama, Colorado 81152
County Schedule No.: R002629

The subject property is a single family residence on five agriculturally-classified acres at a rural location in the north part of the Aban Sanchez Tact Vallejos Lands. Built in 1997, it has a one level, ranch style design consisting of 1,484 square feet with three bedrooms and two baths and a 336 square foot wood deck.

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

BOCC’s Assigned Value:	\$128,906
Petitioner’s Requested Value:	\$60,000 - \$65,000
Respondent’s Requested Value:	\$127,849

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 a proceeding below 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 BOCC. § 39-8-108(5)(a), C.R.S. (2020).

APPLICABLE LAW AND AUTHORITATIVE SOURCES

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). 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

"Qualified verified sales of residential parcels located both in urban areas and rural areas with the land value subtracted from the sales prices are to be used in the valuation process of agricultural residential improvements." 3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 5, at 5.83, (rev. Jan. 2021).

The value of agricultural land is determined "solely by consideration of the earning or productive capacity" of the land, rather than according to one of the three appraisal methods (the cost approach, the market approach, and the income approach). Colo. Const. art X, § 3(1)(a).

FINDINGS AND CONCLUSIONS

In making her argument that the property had been overvalued, the Petitioner stressed that a nearly threefold increase in one year seemed unfair. She did not agree that by discovering additional improvements during its visit, the Assessor was justified in correcting their records and including them in their assessment. Her recommended value of between \$60,000 to \$65,000 was not based on comparable sales data.

Respondent presented expert testimony by Michael Akana, employed by the Teller County Assessor's Office, but who acted on behalf of Costilla County in this case by preparing a real estate appraisal of the property and appearing at hearing. To value the residential improvement, Mr. Akana first calculated a value of \$1,057, or \$211.35 per acre, for the 5 acres of agricultural land at the subject property, in order to remove that value from his indicated residential sales' value as required by the ARL and as shown on page 14 of his appraisal. He then selected three comparable sales within the two-year data collection period from July 1, 2016 through June 30, 2018. He applied the county supported time adjustment and various other adjustments, mainly for the age and square footage of the improvements. He showed that a tight range of from \$130,767 to \$133,299 was indicated after the agricultural land value of \$1,057 was added to the indicated residential improvement value. He concluded to a value of \$127,849 for the subject property as a whole.

Petitioner failed to present any comparable sales data for the Board's consideration in support of her requested value. Consequently, the Board finds Petitioner has not met her burden of proving that the assigned value for tax year 2019 is incorrect. However, Respondent presented evidence in support of a lower value than the BOCC-assigned value – \$127,849 – and requested the Board assign this value the subject property for tax year 2019. The Board will grant this request, and orders that the value of the subject property be reduced to \$127,849.

ORDER

The petition is **GRANTED** on the basis of the Board's adoption of Respondent's recommended value. The Costilla County Assessor's office is ordered to update 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.

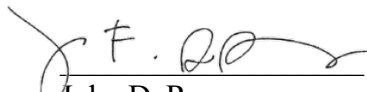
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); see also § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 12th day of May, 2021.

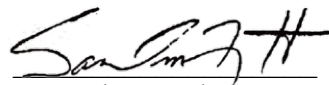
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

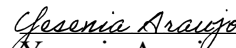



John DeRungs

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.


Yesenia Araujo