

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 75541
Petitioner: RANDY B. DAVIS and KATHERINE J. DAVIS v. Respondent: LAS ANIMAS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on June 8, 2020, Debra A. Baumbach and John F. DeRungs presiding. Randy B. Davis represented both himself and Katherine J. Davis. Respondent was represented by Pam Nelson, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1-3 as well as Respondent’s Exhibits A-C.

DESCRIPTION OF THE SUBJECT PROPERTY

Las Animas County Schedule No.: R0003712

The subject property comprises 40 acres of land and is one of several residential lots in the Cimarron Ranch subdivision, near Weston, Colorado. No private drive has been built to reach a potential building site using the available easement but year round access is possible from the available network of roads in the project which are also used by oil and gas operators to access well heads.

The subject’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$60,000
Respondent's Recommended Value:	\$56,000
Petitioner's Requested Value:	\$10,000

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 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. Colo. 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, a 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 board of equalization proceeding may be presented to the 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

In valuing residential properties, Colorado's statutes and constitution require that the valuation of residential property be determined solely by the market approach to appraisal. Colo. Const. art. X, § 20(8)(c); § 39-1-103(8)(5)(a), C.R.S. (2019). The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), 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. (2019). For tax year 2019, 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

Petitioner's value is unchanged from what the county assessor assigned to the subject property in a previous year—a method which the Board finds does not account for comparable sales that occurred since then during the eighteen month period prior to the valuation date and can therefore be used in the market approach to value the property. Petitioner also referred to unsolicited offers made to him, which were dated after the valuation date and so could not be considered.

Respondent's three comparable sales occurred between August 2017 and May 2018, and range in sale price from \$54,000 to \$88,000. Based on expert testimony by Respondent's witness Ivor J. Hill, Certified General Appraiser contracted by the Las Animas County Assessor's Office, the Board finds that each of the comparable sale properties have similar accessibility as the subject property. Considering the timing of these sales within the statutory period, and the similar characteristics between each of these comparable sale properties and the subject property, the Board finds that Respondent's comparable sale analysis accurately represents the value of the subject property.

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has not met its burden of proving that the assigned value for tax year 2019 is incorrect.

ORDER

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. (2019).

DATED and MAILED this 29th day of June, 2020.

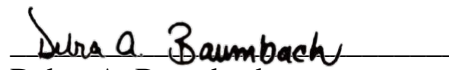
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:




John F. DeRungs

Concurring Board Member:


Debra A. Baumbach
*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.


Kristin Rozansky