

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76543</b>
Petitioner:  <b>Marion J. Wells,</b>  v.  Respondent:  <b>Garfield County Board of Equalization.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 18, 2020, Debra Baumbach and John DeRungs presiding. Petitioner Marion J. Wells appeared pro se. Respondent was represented by Katharine J. Knox, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

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

**DESCRIPTION OF THE SUBJECT PROPERTY**

6702 County Road 309, Parachute, Colorado 81635  
 County Schedule No.: R270070

The subject property is a single-family residence on two acres located two miles south of Interstate Highway 70 in western Garfield County. That puts it in an unincorporated rural area known as Rulison which is roughly midway (ten miles) between the communities of Parachute and Rifle. Built in 1995, it has a two level design with a basement consisting of a two bedroom, three-bath layout with an estimated square footage of 3,826 square feet. It is of unusual “rammed earth” construction.

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:	\$527,000
Petitioner's Requested Value:	\$365,080
Respondent's Requested Value:	\$521,000

### **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. 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.

### **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. (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.

## FINDINGS AND CONCLUSIONS

In making her argument that the property had been overvalued, the Petitioner stressed the lack of services at her rural location when compared to what was available in the nearest communities of Parachute, Battlement Mesa and Rifle. Unfortunately, neither Respondent nor Petitioner found any nearby comparable sales in Rulison during the 24-month period that would support or refute any measurable impact on value for lack of services. Petitioner therefore presented no evidence on which the Board could rely to find in her favor on this point.

To advance her central concern over parity with her neighbors, the Petitioner insisted on applying adjustments to the actual improved value of her comparable sales data assigned by the assessor rather than actual sales data. However, there is no exception in state law to the requirement that actual sale prices be used in a market approach to reach a value conclusion for residential property.

Moreover, while Petitioner complained that the comparable properties' values she presented indicated a lower value should be assigned to the subject, she had little knowledge of the properties' specific attributes. The Board was therefore unable to assess whether the properties presented were similar to the subject (and Respondent's appraiser raised doubts as to whether Petitioner presented comparable properties). Having not used properly adjusted comparable sales to support her value contention, Petitioner's argument amounts to an equalization argument, which is not a proper means of evaluating the value of the property. *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997).

Respondent presented expert testimony by Amber Knox, employed by the Garfield County Assessor's Office, who completed an appraisal in which she properly relied on the market approach. Ms. Knox testified in relevant part that she gave most weight to her most recent Sale 1, which after adjustment for various features provided an indication at the concluded value of \$521,000, rounded (\$6,000 below the CBOE value). That is near the low end of the indicated range after adjustment to four other comparable sales.

The Board finds therefore that by failing to use actual sales data when it was called for by statute, the Petitioner has not met her burden of proving that the assigned value for tax year 2019 is incorrect.

Nevertheless, because Respondent asks the Board to adopt its appraised value for the subject property of \$521,000 (lower than the assigned value of \$527,000) the Board will grant the petition on that basis alone.

## ORDER

The petition is **GRANTED**, and the Garfield County Assessor is ordered to reduce the value of the subject property to \$521,000.

## 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.

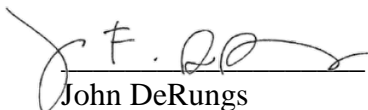
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*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).

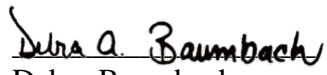
**DATED and MAILED** this 16th day of December 2020.

### **BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

  
John DeRungs

Concurring Board Member:

  
Debra 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 order of the Board of Assessment Appeals.

*Yesenia Araujo* \_\_\_\_\_  
Yesenia Araujo

