

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76744</b>
Petitioner:  <b>CAE Properties LLC,</b>  v.  Respondent:  <b>Douglas County Board of Equalization.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on June 23, 2020, Diane M. DeVries and John DeRungs presiding. Petitioner Elizabeth Wagner appeared pro se, representing the closely held Petitioner entity. Respondent was represented by Megan Taggart, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits 1-7 and Respondent’s Exhibit A.

**DESCRIPTION OF THE SUBJECT PROPERTY**

10660 Flatiron Road, Littleton, Colorado  
County Schedule No.: R0036679

The subject property is a 5.2 acre parcel improved with a single family residence and is located in the McArthur Ranch subdivision. The residence is a ranch-style one-story home with a finished basement, built in 1986. Based on interior photos provided by Petitioner, it appears to have original features and finish. The rolling topography that affords about 90 homes with expansive and sometimes panoramic Front Range views makes these homes very appealing. In this case, however, the Petitioner’s property has no views in the “hollow” that lies at the confluence of two drainage ways where existing trees proliferate. Ms. Wagner also described the negative impact from traffic, noise and dust generated by an existing rock quarry that also uses the roadway serving the subject 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:	\$ 1,000,579
Petitioner's Requested Value:	\$ 618,165
Board's Concluded Value:	\$ 618,165

### **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., 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

By favoring sales data in this subdivision and a competing project known as Oak Hills, the parties still found only a handful of comparable sales. Where only limited data is available, the Board recognizes that extending the search beyond the 18-month period is called for, but within limits under statute. § 39-1-104(10.2)(d), C.R.S. The Board finds that Petitioner's evidence is probative of the subject property's value because Comparable 1 (336 Oakwood Lane) at 4,115 SF, and Comparable 2 (8420 Oak Court) at 2,692 SF, are larger than the subject improvements and still offer views of the surrounding area. The indication of value from Comparable 2 at \$610,000 (Exhibit 4, pgs. 4, 8) is particularly helpful since it presents an obstacle to marketing a property where the noise from its location above Highway I-25 must be accommodated to achieve its view. In the same way, the subject property offers unusual seclusion where most buyers expect expansive views, and an owner must still overlook quarry traffic. Petitioner included the timely sale of a nearby home described as Sale 4 that was smaller than the subject property. But without confirmation of its off market sale conditions, the impact on value could not be reliably measured, preventing use of its indication of value. Sale 3 occurred outside the permissible 5-year period.

Respondent presented expert testimony by Becky Fischer, Chief Residential Appraiser employed by the Douglas County Assessor's Office. In her appraisal on Page A-13, she reported that average sold prices in the Lone Tree market fell by 3.2% and noted that this was counter to increases found in the wider market. In testimony, she could not confirm whether the subject lies in that Lone Tree market area. She reported that paired sales were used for adjustment but no further explanation for the basis of upward adjustment applied to sales on Page A-18 was found in the appraisal. She also applied a higher rate of upward adjustment in the comparison grid than the 0.4% to which she testified. In short, insufficient credible evidence was presented to the Board to support a time trend, either positive or negative, and it is appropriate that none be applied.

Of the four comparable sales presented, Ms. Fischer reported that adjusted indications of value from her Comparables 1 and 2 at 2,565 and 1,654 SF were given most weight in reaching a conclusion of value for the subject. In testimony, Ms. Fischer equated existing trees found on the subject property with the lack of views offered by her Comparables 1 and 2 and she applied no adjustment. (Page A-18.) The Board does not find that this produces a credible result. Petitioner's description of Comparable 2's location, in particular, borne out by the photo evidence provided on Page A-21, gave it outstanding views. Comparables 3 and 4 reflect homes that are significantly upgraded, producing much higher indications of value than the subject warrants. Altogether, the Board was not convinced that these sales are representative of the subject property's value under the market approach.

The Board therefore places more weight on the evidence of Petitioner than on the evidence of Respondent, primarily because Petitioner's sales' indications of value take better account of the property's lack of view, a principal drawback for potential buyers in this subdivision.

Petitioner presented enough probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board concludes that Petitioner has met her burden of proving that the assigned value for tax year 2019 is incorrect.

**ORDER**

The petition is **GRANTED**. The Douglas County Assessor is ordered to reduce the value of the subject property to \$618,165 for tax year 2019.

**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 December, 2020.

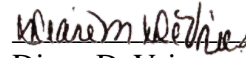
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



  
John DeRungs

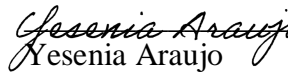
Concurring Board Member:

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Diane DeVries

*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.

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Yesenia Araujo