

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78901
Petitioners: KEITH AND GAIL FARLEY, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 19, 2020, Gregg Near and John DeRungs presiding. Petitioner Gail Farley appeared pro se on behalf of Petitioners. Respondent was represented by Rachel Bender, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

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

DESCRIPTION OF THE SUBJECT PROPERTY

4573 Calle Louisa, Golden, CO 80403
Schedule #300187782

The subject property is six acres of land improved with a residential structure in the Elk Creek Meadows subdivision reached from the Foothills Highway between Golden and Boulder. According to the Petitioner, when completed in 1989 it was originally intended to be a walkout basement for an A-frame home that was never built over it. In the last five years, the entire 1,784-SF one bedroom, one bath home was gutted as part of its intended remodel with new finishes. But that work revealed construction defects that prevented any restoration of a now unfinished, uninsulated 576-SF portion of the structure, which now serves as dry storage only.

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: \$315,000
Petitioner's Requested Value: \$173,603

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

The Petitioner objected to the Assessor's method of valuing her property, citing its comparison with only above grade homes mostly in better (average) condition. She provided photographs of the construction defects that the County found and cited when denying her a permit to complete restoration of this portion of the home. While adopting several of Respondent's

comparables, Petitioner made unsupported and erroneous adjustments and then averaged the resulting indications to reach her recommended value.

Respondent presented expert testimony by Lauri Burtschi, employed by the Jefferson County Assessor's Office, who testified in relevant part that the design that best fits the subject property should classify it as a "subterranean" home. She admitted that she knew of no sales of this style of home at this general location in over five years. Still, she was unwilling to consider those that had sold at other locations since she reported that sales data there showed only a nominal (5%) difference between subterranean homes and conventional ones, which seemed unlikely to be accurate.

Instead, by using gross adjustments of 40% to 50% to four sales she attempted to support her conclusion from one and two story homes nearby. Unfortunately, the magnitude of these adjustments all generally applied in a downward direction (with the exception of land area), calling into question whether the sales are comparable to begin with. In particular, the Board found a \$47,800 (or \$83 PSF) downward adjustment to account for the subject's unfinished living area was not convincing. Because that deficiency might prevent the home from being mortgaged or insured, the impact goes well beyond simply a cost to cure (if a cure is possible).

However, due to their failure to present a properly supported Market Approach to reach their recommended value, the Board finds that the Petitioners have not met their burden of proving that the assigned value for tax year 2019 is incorrect.

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.

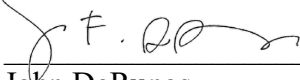
See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this 1st day of March, 2021.

BOARD OF ASSESSMENT APPEALS:

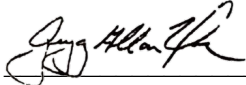
Drafting Board Member:





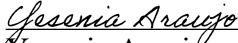
John DeRungs

Concurring Board Member:



Gregg Near
*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