

PETITION FOR ABATEMENT OR REFUND OF TAXES

County Name HUERFANO

Date Received 2/20/2024
Use Assessor's or Commissioners Date Stamp

Section I: Petitioner: please complete Section I only

Date: February 20 2024
Month DAY Year

Petitioner's Name: St Jacques, Will & Janet Marie
Petitioner's mailing address: 8630 County Road 521
Walsenburg CO 81089
City or Town State Zip Code

SCHEDULE OR PARCEL NUMBER(S)	PROPERTY ADDRESS OR LEGAL DESCRIPTION OF PROPERTY
<u>474802</u>	<u>Parcel 42 Major Ranch Phase #2 216.50 AC</u>

Petitioner requests an abatement or refund of the appropriate taxes and states that the taxes assessed against the property for the property tax year 2023 are incorrect for the following reasons: (Briefly describe why the taxes have been levied erroneously or illegally, whether due to erroneous valuation, irregularity in levying, clerical error, or overvaluation. Attach additional sheets if necessary.)

Due to the BAA decision the value has changed, see attached.

Petitioner's estimate of value \$ 782,500 2023
Value Year

I declare, under penalty of perjury in the second degree, that this petition, together with any accompany exhibits or statements, has been prepared or examined by me, and to the best of my knowledge, information and belief, is true, correct and complete.

Petitioner's Signature Daytime Phone Number _____

BY _____
Agent's Signature * Daytime Phone Number _____

*Letter of agency must be attached when petition is submitted by an agent.

If the Board of County Commissioners, pursuant to § 39-10-114(1), C.R.S., or the Property Tax Administrator, pursuant to § 39-2-116, C.R.S., denies the petition for refund or abatement of taxes in whole or in part, the Petitioner may appeal to the Board of Assessment Appeals pursuant to the provisions of § 39-2-125, C.R.S., within thirty days of the entry of any such decision, § 39-10-114.5(1), C.R.S.

Section II: Assessor's Recommendation			
(For Assessor's Use Only)			
	Tax Year	<u>2023</u>	
	<u>Actual</u>	<u>Assessed Value</u>	<u>Tax</u>
Original	<u>\$791,882</u>	<u>\$53,716</u>	<u>\$3,531.76</u>
Corrected	<u>\$727,500</u>	<u>\$49,402</u>	<u>\$3,207.72</u>
Abate/Refund	<u>\$64,382</u>	<u>\$4,314</u>	<u>\$324.04</u>

Assessor recommends approval as outlined above

If the request for abatement is based upon the grounds of overvaluation, no abatement or refund of taxes shall be made if an objection or protest to such valuation has been filed and a Notice of Determination has been mailed to the taxpayer, § 39-10-114(1)(a)(I)(D), C.R.S.

Tax year: 2023 Protest? No Yes (if a protest was filed, please attach a copy of NOD.)

Assessor recommends denial for the following reason(s):

Elisha Meadows
Assessor's or Deputy Assessor's Signature

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioners: WILL AND JANET ST. JACQUES v. Respondent: HUERFANO COUNTY BOARD OF EQUALIZATION	Docket No: 2023BAA714
FINAL AGENCY ORDER	

THIS MATTER was heard by the Colorado Board of Assessment Appeals (“Board”) on January 18, 2024, Amy Williams and Monte Mullins presiding. Petitioners appeared pro se. Respondent, Huerfano County Board of Equalization, was represented by attorney Lisa Powell-DeJong. Petitioners appeal the actual value of the subject property for tax year 2023.

EXHIBITS AND WITNESSES

The Board admitted into evidence Petitioners’ Exhibits 1-9 and 11-24 and Respondent’s Exhibits A.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 8630 Co. Rd. 521
 Walsenburg, Colorado 81089

County Schedule No.: R-474802, MAP 28-5155-034-00-042

Located within the Major’s Ranch Subdivision, which is situated approximately 11 miles northwest of Walsenburg, the subject property consists of a single-family residence with a detached garage, a partial basement, and a few outbuildings that are all situated on 216 acres of ranchland. Although there are some disagreements between the parties regarding the specific sizes of certain elements of the improvements on the property, per the county data, the house that was built in 2014 includes 3,043 square feet of space above grade, a loft of 480 square feet, and 1,003 square feet below grade. There is a three-car detached garage and a barn with a finished “vet” room, which includes a bathroom and a covered hay shed. A larger utility building housing the

cistern and pumps is also on the site. The parcel is classified as agricultural grazing based on a Lease Agreement with most of Major's Ranch. Whereas neither the residence nor any of the outbuildings are integral to the agricultural use of the property, the improvements along with two acres of the property are classified and valued as residential.

The appealed value assigned by the County Board of Equalization ("CBOE") and the parties' assertions of the subject property's value are as follows:

Appealed CBOE Value:	\$846,882
Petitioners' Requested Value:	\$585,049
Respondent's Requested Value:	\$871,700

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 or county board's valuation or classification 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). Whether the taxpayer has satisfied this burden is a question of fact for the Board to resolve. *Sandra K. Morrison Tr. v. Bd. of Cnty. Comm'rs*, 465 P.3d 582 (Colo. 2020).

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 proceeding below may be presented to this Board for a new and separate determination. *Id.* 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 Cnty. 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 also questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cnty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

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.

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. For tax year 2023, this 18-month period ended on June 30 of 2022. *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 OF FACT AND CONCLUSIONS OF LAW

Janet St. Jacques testified pro se on behalf of Petitioners and presented numerous exhibits and read her prepared written testimony. To summarize, her case in chief consisted of arguments that the assessor made a variety of improper changes to several renditions of their CAMA USA Reports with respect to the various codes and sizes assigned to the land and improvements on the subject property. She also testified that she believed that they were being double taxed on various elements of the property. She further argued that the time adjustments were not supported. Additionally she contended that the land value assigned to the two-acres of the subject that are being valued as residential was not estimated properly because the County used 2-acre lot sales from the dissimilar Rio Cucharas mountain community, rather than sales from more similar rural subdivisions.

A main additional argument presented by Ms. St. Jacques was that the assessor labeled and considered the “vet” room that is situated within the horse barn as an apartment. The assessor called the improvement a “barnominium,” while including it in the GLA area of the home, and valued it commensurately with regular gross living area of the main residence. She further testified that the size of said finished space in the horse barn was over-stated because the assessor included areas with lesser finishes such as the tack and feed rooms.

Petitioners requested a value of \$585,049 for the subject property. Ms. St. Jacques arrived at the value by using the assessor’s CAMA USA reports and applying a variety of different per square foot values from this report, along with an average price per square foot from a number of closed sales to the various areas of her property to which she believed they related. She also presented a number of land sales from the Major’s Ranch subdivision with a tabulation of an average sales price of \$1,368 per acre, which was what she indicated should be the value of her 2-acre residentially classified and valued land area, rather than the \$4,341 per acre rate used by the Respondent.

Respondent is requesting a value of \$871,700¹ for the subject property. Respondent presented expert testimony from Bruce Quintana, Chief Appraiser employed by the County Assessor’s Office, who testified in support of the Appraisal Report admitted as Exhibit A. Respondent testified that the value of the subject property was developed using a variety of

¹ Section 39-8-108(5)(a.5), C.R.S., effective August 10, 2022, permits the Board to increase valuations by no more than five percent above the valuation set by the CBOE.

methods and data sets. First, for the 214+/- acres of agriculturally classified land, the income approach was used. For the 2-acre residentially classified land area with the improvements that are not deemed integral to the agricultural use of the agricultural land, the sales comparison approach was employed, and a number of 2+/- acre lot sales from the Rio Cucharas subdivision were analyzed and used. He chose this subdivision due to the large number of 2+/- acre lot sales. As for the residence, again using direct sales comparison, three sales of somewhat similar homes from three different locations within the county were presented and compared to the home on the subject property. These sales were analyzed and compared "net" of their respective land values, and their land values were supported with sales of similar vacant land.

A major item of note is that included in the GLA calculation for the subject's residence was 910 square feet of finished space that was actually located within the horse barn. Mr. Quintana testified that because the HOA for the subject subdivision did not allow ADUs (Accessory Dwelling Units), but this area in the barn was finished and most closely resembled an apartment or finished living area, he added it to the GLA of the home. This was to avoid this space violating the HOA regulations. Last, Mr. Quintana testified that he used the cost approach for the value of the balance of the horse barn not already valued with the home, as well as for valuation of the hay shed. He reported that the utility building housing the cistern and pump was embedded in the value of the home, and was not valued or added separately. Upon estimating the value of each of the separate elements of the subject property, the values were summed for a total indication of value for the property.

The Board finds that Petitioners presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2023.

The Board concurs with the Respondent in the general overall methodology and approaches that were employed to value the various elements of the property with one significant exception—the "vet" room in the horse barn. First of all, even if it is finished in the same manner as the residence, it is unacceptable to simply add finished space located in an outbuilding to the gross living area of a residence. Being in an outbuilding, this space is simply less functional and likely somewhat less valuable than if it were already actually embedded within the residence itself. Additionally, because it specifically cannot be an ADU per HOA regulations, it is likely even less functional. If its use is truly restricted to a "vet" room or the like, the pool of buyers that can or would need and use it for that limited purpose is greatly reduced. By doing this, the GLA of the subject home is substantially over-stated and the value is therefore over-stated as well. Furthermore, from data and testimony of Ms. St. Jacques, the truly finished area is not 910 square feet because the tack and feed rooms are of lesser finish.

In attempting to provide a value for the subject property, Petitioners did not compare nor adjust any vacant or improved sales to the subject property to arrive at an indicated or the requested value. Ms. St. Jacques analysis and conclusion of value was not supported. Whereas the Board concurs with the bulk of the Respondent's analysis, at least considering the general methods employed, and it only takes exception to the portion of the horse barn that was included within the GLA of the residence, it is this part of the analysis that is in question. However, the Board is unable to decipher or recreate the math that was used in the adjustment grid of the Respondent's appraisal report. As such the Board could not identify the rate or amounts used in making the GLA

adjustments. Furthermore, no data or analysis was presented regarding the valuation of the outbuildings aside from indicating the cost approach was employed.

Therefore, in reviewing the data presented, the Board analyzed the Respondent's residential sales data. Net of land, the sales data indicates Net Sales Prices and Net Sales Prices per Square Foot after being adjusted for time as follows:

<u>Sale No.</u>	<u>Net Price</u>	<u>Net Price/SqFt</u>
Sale 1	\$941,278	\$272
Sale 2	\$459,471	\$234
Sale 3	\$351,033	\$160

From the Respondent's appraisal report, after adjustment, the final indicated value of the subject's residential improvements net of land and outbuildings was concluded at \$782,694 which translates to \$198 per square foot being within the above noted range of the sales and appropriately below Sales 1 and 2 but above Sale 3 for various reasons. This did, however, include a minor 2.8% adjustment for the functionality of the "apartment" in the horse barn. If the space were not included within the GLA, that adjustment would not be necessary, and an indicated value of about \$203.50 per square foot would then be suggested. Furthermore, if the 910 square feet of space in the horse barn that the Respondent included in the GLA were removed from the GLA calculation, the smaller size would cause at least a slightly higher per square foot consideration. Herein, a rounded value of \$205 per square foot is used. When this per square foot rate is applied to the size of the above grade GLA of the subject without the vet room in the horse barn of 3,043 square feet, the indicated contribution is \$623,815 or about \$625,000 when rounded.

To this, the value of the outbuildings and land must be added. From Respondent's appraisal report using the cost approach, the outbuildings were valued at \$77,029 for the 2,450 square feet of the horse barn, excluding the 910 square feet that was added to the house GLA, plus the 1,200 square feet of the utility building/hay shed. This totals 3,650 square feet of gross building area, and translates to an average of only \$21 per square foot for the outbuildings. Again, however, no data or analysis for the calculations used to arrive at the cost/value figures were included. Certainly, the 910 square feet of the higher finished space of the barn would add more than the \$21 per square foot of the balance of the outbuildings. Conversely, not being able to be used as an ADU and solely as a vet room or the like diminishes its contribution to something well below the \$205 of the home, especially whereas that figure embeds the garage, loft, and basement. Furthermore, the physically depreciated replacement cost of this space is likely too high as well due to the use limitations. Further reducing the cost relative to the residential GLA space is the lesser finishes of the tack and feed rooms. Hence, a contribution above the \$21 of the balance of the outbuildings and yet well below the \$205 of the home, but more downward from the midpoint of about \$115 at about \$75 per square foot is considered reasonable and will be used herein. This tabulates to a value of \$68,250 for the 910 square feet of higher finished space in the barn. As such, a grand total of \$145,279 for all of the outbuildings is tabulated.

Therefore, total value of the entire subject property is tabulated as follows:

Agricultural land:	\$ 3,350
Residential Land:	\$ 8,682

Outbuildings: \$145,279
Residential improvements: \$625,000
Total Property Value: \$782,311
Rounded \$782,500

ORDER

The petition is **GRANTED**. The actual value of the property shall be \$782,500 and the Assessor's Office is ordered to update its records accordingly.

APPEAL RIGHTS

If the decision of the Board is against Petitioners, Petitioners 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). § 24-4-106(11), C.R.S.; § 39-8-108(2), C.R.S. (rights to appeal on a protest and adjustment appeal); § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement or refund appeal).

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). § 24-4-106(11), C.R.S.; § 39-8-108(2), C.R.S. (rights to appeal on a protest and adjustment appeal); § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement or refund appeal).

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. § 39-8-108(2), C.R.S.; § 39-10-114.5(2), C.R.S.

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. *Id.*

DATED and SERVED this February 6, 2024.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Monte Mullins

Concurring Board Member:



Amy Williams

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*