

|  |                          |
|--|--------------------------|
| <b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br>1313 Sherman Street, Room 315<br>Denver, Colorado 80203 | <b>Docket No.: 75755</b> |
| <hr/> Petitioner:  |                          |
| <b>PEGGY MATTHEWS-FORNEY,</b>  |                          |
| v.   |                          |
| Respondent:  |                          |
| <b>LAKE COUNTY BOARD OF EQUALIZATION.</b>  |                          |
| <b>ORDER</b>   |                          |

**THIS MATTER** was heard by the Board of Assessment Appeals on January 17, 2020, Diane M. DeVries and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Lindsey Parlin, Esq. Petitioner is protesting the 2019 actual values of the subject properties.

At the outset of the hearing, the parties agreed to the admission of Petitioner’s Exhibits 1 through 5, and Respondent’s Exhibits A through C.

The subject properties are five vacant residential lots in the West Pines subdivision, which contains a total of seven lots. Of the two lots in the West Pines subdivision that are not subjects of this appeal, one is improved with a residence. The other, “Lot 5,” was sold at the end of the base period for the 2019 assessment year and is offered by both parties in this case as a comparable sale. For the tax year at issue, the actual values of the subject lots as requested by the Petitioner, as assigned by the Respondent, and as determined by this Board are summarized in the table below.

| <b>Subject Lot Description</b>       | <b>Subject Lot Address</b>               | <b>Acres</b> | <b>Petitioner’s Requested Value</b> | <b>Respondent’s Assigned Value</b> | <b>Board’s Determined Value</b> |
|--------------------------------------|--|--------------|-------------------------------------|------------------------------------|---------------------------------|
| Lot 2: Lake County Acct. No. R003433 | 201 Snowshoe Rabbit Drive, Leadville, CO | 3.100        | \$41,531                            | \$101,026                          | \$52,384                        |
| Lot 3: Lake County Acct. No. R003434 | 200 Snowshoe Rabbit Drive, Leadville, CO | 3.070        | \$41,129                            | \$80,039                           | \$51,877                        |
| Lot 4: Lake County Acct. No. R003435 | 250 Snowshoe Rabbit Drive, Leadville, CO | 2.670        | \$35,770                            | \$87,013                           | \$45,118                        |
| Lot 6: Lake County Acct. No. R003437 | 350 Snowshoe Rabbit Drive, Leadville, CO | 2.210        | \$29,607                            | \$72,022                           | \$37,345                        |
| Lot 7: Lake County Acct. No. R003438 | 300 Snowshoe Rabbit Drive, Leadville, CO | 2.140        | \$28,669                            | \$69,740                           | \$36,162                        |

### **PETITIONER'S EVIDENCE**

Petitioner alleged, and Respondent did not contest, that 51 qualified sales are located in the same economic area as the subject lots. Petitioner contends that, because 51 qualified sales are available, the assessor's use of only 1 sale to establish values for the subject properties is inadequate.

Of these 51 qualified sales, Petitioner presented eight properties to serve as comparable sales. One of these was Lot 5, which is located within the West Pines subdivision, while the remaining seven are located in a neighboring subdivision called Mountain Pines Ranch. The Mountain Pines Ranch subdivision is located directly south of the West Pines subdivision and is within the same economic area as the subject lots. Petitioner testified that she is the developer of the West Pines subdivision, and that she designed it to be a "clone" of the larger Mountain Pines Ranch subdivision. Petitioner also presented an aerial photograph showing that all lots in West Pines and Mountain Pines Ranch 1-4 subdivisions have the same roads, utilities, topography, vegetation, and amenities. For these reasons, Petitioner contends that the sales in Mountain Pines Ranch are qualified comparable sales for the subject lots.

Petitioner contends that Lot 5 sold for a significantly higher price than the values of the subject lots, and claims the reason for this discrepancy is that Lot 5 has a large meadow and significantly fewer tall lodgepole pines, and therefore has superior unobstructed views. Petitioner provided a photograph taken from the building envelope of Lot 5 showing a very good mountain view. Respondent's photographs were taken from and along an adjacent road, not within the established building envelopes. Furthermore, Petitioner testified that she was the seller of Lot 5 during the 2019 sale, and that although the buyers had their pick of all six vacant lots in the subdivision (including the five subject lots), they paid more for Lot 5 due to its views. For these reasons, Petitioner contends that the sale of Lot 5 is an "outlier" and she did not include it in deriving her estimate of value per acre.

### **RESPONDENT'S EVIDENCE**

Respondent presented the 2019 sale of Lot 5 as the only comparable sale for the subject lots. Lot 5 is located in the same subdivision as the subject lots, and its 2019 sale price was \$138,900.

Respondent's witness, Mr. Ehrlich, is an appraiser employed by the Lake County assessor's office. Mr. Ehrlich provided a photograph of Lot 5 as well as photographs of each of the subject lots. These photographs were taken from and along the adjacent road. In response to questioning from Petitioner and the Board, Mr. Ehrlich testified that he was unable to reach the building envelopes of any of the subject lots or Lot 5 due to deep snow, and so was unable to see the actual views from the building sites. Mr. Ehrlich opined that Lot 5 does not have a superior view compared to the subject lots.

Mr. Ehrlich also testified that the Lake County Assessor's office has a policy of using only qualified sales within the same subdivision as the subject property. Even if there are qualified sales outside the subject subdivision but within the same economic area, such sales are not used as comparables to determine value for the subject property. If there are no sales within the same

subdivision at the time of a reassessment, the assigned value(s) for the individual properties within that subdivision are left unchanged from the previous assessment period.

Here, the only qualified sale within the same subdivision is Lot 5, and this is the only comparable sale on which the Respondent relied. Respondent's evidence did not include information about any qualified sales other than Lot 5.

### **BURDEN OF PROOF AND STANDARD OF REVIEW**

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (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 Commission*, 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 the BAA, 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).

### **BOARD'S FINDINGS AND CONCLUSIONS**

For the reasons discussed below, Petitioner presented sufficient probative evidence and testimony to persuade the Board that the assessor's valuations of the subject properties for the 2019 tax year were incorrect.

#### **I. Qualified Comparable Sales**

The Board agrees with Petitioner that the 51 qualified residential lot sales in the subject lots' economic area, as identified by Respondent during the assessment base period, supports the use of more than one comparable sale for the valuation of the five subject lots. The Board is persuaded that similarly sized vacant lots in the Mountain Pines Ranch subdivision just south of the West Pines subdivision have similar location and other general physical characteristics as the subject lots. The Board is convinced that buyers looking for lots in this vicinity would likely look at available sites in both subdivisions. The Board finds it reasonable to include sales of similarly sized lot sales in Mountain Pines Ranch in the valuation analysis of the subject lots.

The Board is not convinced by testimony of Respondent's witness, Mr. Ehrlich, that the Lake County Assessor's office policy to use only qualified sales within the same subdivision as the subject property is appropriate. The Board finds no supporting guidance in the Assessor's Reference Library (ARL) for this policy to exclude qualified sales within the economic area, but outside the subject subdivision, from the market sales analysis to determine value for the subject properties. The Board concludes that valuing the five subject lots solely on one sale within the West Pines subdivision (Lot 5) is inadequate when qualified sales of similarly sized lots are available in a nearby subdivision, particularly when the price per acre for Lot 5 (\$58,856) is nearly 150% higher than the average price paid for seven other lots of similar size sold in the subdivision nearby (\$23,704).

## **II. View Premium Analysis of Lot 5**

The Board is persuaded by Petitioner's photograph, taken from Lot 5's building envelope, that the large meadow on that lot provides good mountain views. The Board is persuaded that these views are superior to views from the subject lots, which are predominantly obscured by the tall lodgepole pine trees that cover much of this general area.

The Board finds that the photographs presented in Respondent's Exhibit C do not reflect the views from each of the subject lot building envelopes. Despite Lot 5 having more unobstructed views because of slightly higher elevation and the large meadow without the tall lodgepole pines, Respondent's witness claimed no view adjustment is required to the values for subject Lots 2, 4, 6, or 7 because buyers of those lots could improve their views by removing trees. The Board disagrees. Relying on the photographs provided by both parties, the Board finds that tree removal on the subject lots to enhance views would likely be significant and, therefore, costly. A buyer would likely pay less for a lot that would require costly tree removal to improve the view compared to buying a lot that would not require tree removal. Based on the evidence provided by both parties, the Board concludes it is appropriate to adjust the sale price of Lot 5 downward for superior view compared to all five of the subject lots. However, the exact quantity of that adjustment cannot be determined based on the evidence that the parties have provided.

The Board is not persuaded by Petitioner's claim that the sale of Lot 5 is an "outlier" or should be excluded from consideration in the valuation analysis. To determine the values for the subject lots, the Board has considered the sale of Lot 5 in the subject subdivision as well as the 7 other sales presented by Petitioner.

The Board finds the Restricted Appraisal Report lacks sufficient information to adequately apprise the Board of the market competition, market conditions, and the subject lots themselves. In light of Petitioner's evidence of Lot 5's superior views, and further considering that Lot 5 is the only comparable sale that Respondent has presented, Respondent's view premium analysis and valuation analysis of the subject lots are not credible.

Accordingly, the Board concludes that Petitioner's evidence is sufficient to prove error in Respondent's valuation.

## **III. Board's Determined Value**

Petitioner presented eight sale comparables and based her value per acre on five of the sale prices per acre, without considering market adjustments to the sales as required by the market approach to value. Therefore, although Petitioner has met her burden to show error in the assessor's valuation, the Board is not persuaded that the actual values of the subject properties are as low as Petitioner requests.

In *Sampson*, the court implicitly recognized that in appropriate cases where the Board rejects both the Respondent's valuation and the Petitioner's proposed valuation, the Board may determine a

new valuation. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (2005). See also *Steamboat Ski & Resort Corp. v. Routt Cnty. Bd. of Equalization*, 23 P.3d 1258, 1260-61 (Colo. App. 2001) (affirming the BAA's determination as to the appropriate valuation of the property at issue, where the determination was supported by competent and substantial evidence in the record as a whole).

To conclude to values for the subject lots, the Board has considered the sale of Lot 5 in the subject subdivision as well as the seven other sales presented by Petitioner. The Board is persuaded by the evidence presented that the Mountain Pines Ranch location is comparable to the West Pines subdivision.

Adjustments for any changes in market conditions or for any variances in lot sizes are not at issue in this case, and the parties did not present any evidence thereof.

Here, the eight sales presented by Petitioner, including Lot 5, range in lot size from 2.29 to 3.402 acres and range in price from \$21,598 to \$58,856 per acre. It is notable that the price per acre for Lot 5 (\$58,856) is nearly 150% higher than the average price per acre that was paid for the seven lots of similar size sold in the Mountain Pines Ranch subdivision nearby (\$23,704), which range from \$21,598 to \$27,533 per acre. Insufficient evidence was provided by the parties to support a view premium price adjustment for Lot 5. For that reason, the Board has considered the sale of Lot 5 in the conclusion of a value per acre but has not given it the most weight. Giving equal value to all eight sales, the Board concludes to a value estimate of \$28,000 per acre for each of the subject lots. The vacant lots in the West Pines subdivision are currently receiving a 39.65% discount; applying that subdivision discount to the value estimate of \$28,000 results in an adjusted value of \$16,898 per acre. The acreage for each of the subject lots has been multiplied by \$16,898 to derive the total 2019 actual value for each lot as follows:

|   |                 |
|---|-----------------|
| <b>Lot 2: Lake County Account No. R003433</b> | <b>\$52,384</b> |
| <b>Lot 3: Lake County Account No. R003434</b> | <b>\$51,877</b> |
| <b>Lot 4: Lake County Account No. R003435</b> | <b>\$45,118</b> |
| <b>Lot 6: Lake County Account No. R003437</b> | <b>\$37,345</b> |
| <b>Lot 7: Lake County Account No. R003438</b> | <b>\$36,162</b> |

**ORDER:**

Petition is GRANTED IN PART. The Lake County Assessor is directed to change his/her records accordingly.

**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.

**DATED and MAILED** this 3<sup>rd</sup> day of March, 2020.

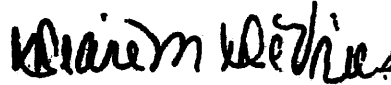
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



\_\_\_\_\_  
Louesa Maricle

Concurring Board Member:



\_\_\_\_\_  
Diane M. 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 decision of the Board of Assessment Appeals.

  
\_\_\_\_\_  
Jacqueline Lim