

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76589
Petitioner: MATTHEW J. FONDIE, v. Respondent: SUMMIT COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on March 16, 2020, Gregg Near and Diane M. DeVries presiding. Matthew J. Fondie appeared in pro se. Respondent was represented by Cameron Turpin, Esq. Petitioner protests the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted Respondent’s Exhibit A and expert testimony by Respondent’s witness Michael A. Peterson, a Certified General Appraiser employed by the Summit County Assessor’s Office.

DESCRIPTION OF THE SUBJECT PROPERTY

478 Hamilton Court, Breckenridge, CO 80424
Summit County Schedule No.: 6512086

The subject property is a single-family home site of 2.01 acres, and it is classified as vacant land. The subject property’s highest and best use is residential use. Its actual value, as determined by Respondent’s site-specific appraisal, is lower than the value determined by the county’s mass appraisal. Accordingly, Respondent recommends a reduction in assigned value. The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by the parties, are:

CBOE's Assigned Value:	\$380,845
Respondent's Recommended Value:	\$341,469
Petitioner's Requested Value:	\$221,100

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. Colo. 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, a 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 board of equalization proceeding may be presented to the 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. (2019).

APPLICABLE LAW

Value, for property taxation purposes, must be based on a property's highest and best use. ARL Vol. 3 at 2.3 (revised Jan. 2020). For residential property, value 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. (2019).* 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.

THE BOARD'S FINDINGS AND CONCLUSIONS

Petitioner maintains that the Assessor and the County Board of Equalization are in error regarding the valuation of the subject property.

Petitioner disputed the comparable sales utilized within the appraisal report prepared by Respondent's witness but did testify Respondent's Sale No. 1 and 5 were the most similar. Petitioner contends Respondent's witness mischaracterized important features of the subject lot and did not consider how these factors should have lowered the appraised value. Specifically Petitioner noted Respondent's witness did not properly adjust for the influence of mining waste as well as a stream and wetlands that cause difficulty in development. Petitioner contends the subject lot has no view.

The Board finds the position taken by Petitioner is not supportable. Petitioner provided no comparable sales and although Petitioner considered Sale No. 1 and 5 of Respondent's report to be the most similar no attempt was made to adjust for property features, most specifically for time (market conditions).

The Board finds Respondent's appraisal report to be compliant with current standards. The report presented five comparable sales that were appropriately adjusted detailing significant property differences. Further, Respondent's report correctly adjusted for changing market conditions between the sale dates of the comparables presented and the required date of valuation. Respondent's appraiser disputed Petitioner's claims of mining waste, stating his opinion that the claimed mining waste was only a mound of dirt. The witness also noted the stream was intermittent and was contained within the wetlands easement, an area that cannot be developed. The subject lot was determined to have an average view, a fact that was recognized by the witness. Mr. Peterson applied negative adjustments for better views to all the sales as appropriate. The appraiser's comparable sales were all within the subject subdivision with one, Sale No. 2, directly contiguous to the subject. The Board reviewed Sale No. 1 and No. 5 and found the time adjusted sale prices to have been \$336,240 and \$328,947. These sales clearly support the witness's value opinion particularly in respect to the time adjusted sale price of the contiguous lot, Sale No. 2, of \$478,257. The Board finds Respondent's appraisal report persuasive.

ORDER

The Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$341,469. The Summit 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. (2019).

DATED and MAILED this 30th day of April, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

A handwritten signature in black ink, appearing to read "Gregg Near", written over a horizontal line.

Gregg Near

Concurring Board Member:

A handwritten signature in black ink, appearing to read "Diane M. DeVries", written over a horizontal line.

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.

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Jacqueline Lim