

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79037
Petitioner: CONSTANCE K. BUETOW, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 7, 2021, Amy Williams and Sondra Mercier presiding. Petitioner Constance K. Buetow did not appear, but Barton M. Buetow, spouse of Petitioner, appeared without objection from Respondent. Respondent was represented by Rebecca P. Klymkowsky, Esq. Petitioner is appealing the 2019 actual value of the subject property.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibit 1. The Board also admitted Respondent’s Exhibit A. The Board admitted Micah Hayward, Certified Residential Appraiser with the Jefferson County Assessor’s Office, as an expert witness.

DESCRIPTION OF THE SUBJECT PROPERTY

13062 Lori Drive, Conifer, Jefferson County Schedule No. 300069364

The subject is a 9.118-acre parcel of vacant land. The site is bisected by Callae Drive, with approximately 2.62 acres lying west of Callae Drive and 6.5 acres to the east. The property is zoned A-2, Agricultural District, but is classified as vacant land. (Exhibit A, pg. 5.)

The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by each party, are:

CBOE’s Assigned Value:	\$101,416
Respondent’s Recommended Value:	\$101,416
Petitioner’s Requested Value:	\$40,000

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 (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 Colorado Constitution's Article X, section 20 eliminated the presumption favoring a pending valuation in property tax appeals. *See* Colo. Const. art. X, § 20(8)(c); § 39-8-108(6), C.R.S.; *Sampson*, 105 P.3d at 207. 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).

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.*

APPLICABLE LAW AND AUTHORITATIVE SOURCES

Section 39-1-103(5)(a) of the Colorado Revised Statutes states in part:

The actual value of such property shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal.

As a general rule, section 39-1-106, C.R.S. requires that the fee simple estate in property be valued for property tax purposes. *City and Cnty. of Denver v. Bd. of Assessment Appeals of the State of Colo.*, 848 P. 2d 355, 359 (Colo. 1993). "Market value of the fee simple estate should reflect market assumptions, including market rent, market expenses, and market occupancy." 3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 2, at 2.2 (rev. Jan 2021).

The Dictionary of Real Estate Appraisal defines market value as follows:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed. (2015).

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.

When valuing vacant land using the market approach, assessors must consider the direct costs of development, and access, among other factors. § 39-1-103(14)(b), C.R.S; *see Fidelity Castle Pines v. State of Colorado*, 948 P.2d 26 (Colo. App. 1997).

FINDINGS AND CONCLUSIONS

1. Statement of Issues

Mr. Buetow contends that the subject parcel is not buildable for residential use. He cited three issues relative to the parcel that limit or in his opinion even preclude potential development of the parcel: (1) topography and slope of as much as 120-160 feet on the 6.5-acre eastern portion of the site creates development issues impacting road cuts and septic systems; (2) parcel is less than 10-acres in size and therefore does not meet the qualifications as a buildable site under A2 zoning; and, (3) parcel does not have legal access to the 2.62-acre portion to the west of Callae Drive, which he believes is the only potential building site.

Mr. Buetow cited the Jefferson 2008 Planning and Zoning regulations, alleged County and State requirements for utilities and access, and recounted conversations with Jefferson County Planning and Zoning officials in support of his case. Mr. Buetow provided no supporting documentation or witnesses for review or further consideration of the Board.

Petitioner requested a value of \$40,000 for tax year 2019 based on the 2017 assigned value of \$30,000 adjusted upward for improvement in market conditions. Petitioner provided no sales or market data in support of his requested value.

2. Appraisal Methodology

The Board finds Petitioner's methodology of determining value based on an adjustment to a prior value is not compliant with C.R.S. section 39-1-103(5)(a), which requires that values be determined based on consideration of the cost, market, and income approaches.

The Board found Respondent's valuation of the subject credible. Mr. Hayward considered all three approaches to value and correctly completed a site-specific appraisal of the subject property, comparing sales of similar vacant sites and adjusting for time and a variety of characteristics.

Relative to Mr. Buetow's testimony, Mr. Hayward acknowledged that the topography and shape of the parcel were inferior characteristics of the subject that were already pre-set within the County's system, which resulted in an inherent adjustment of 15% for parcel shape (as a road bisects the property) plus an adjustment of 30% for topography.

Mr. Hayward identified the subject as being within the Conifer/285 Corridor Comprehensive Master Plan Area of Jefferson County. He recognized that the subject is an unplatted parcel zoned A-2, which requires a minimum lot size of 10 acres for development. However, he identified Callae Drive as an easement area that was subtracted from the subject's original parcel size, resulting in the reported 9.12 acres. He reported that a legal parcel research project for the subject was completed in 2008 by the Jefferson County Planning and Zoning Division, which determined that the subject was one legal parcel, and that although the current lot size was less than 10 acres, an Administrative Exception could be sought and would likely be granted. This would legalize the lot size and allow its development. Per a 2008 memorandum, the subject's owner also has the option to dedicate the road easement to the County. If the road is dedicated and accepted by the County, this county-dedicated road would create two legal parcels. (Exhibit A, pg. 6.)

Regarding the subject's access, Mr. Hayward reported that Callae Drive provided legal access to each segment of the parcel and that aerial photography showed a roughed-in driveway to a possible building envelope accessed through an adjacent parcel to the south. (Exhibit A, pg. 6.)

The Board finds that Respondent gave adequate consideration to the subject's issues of topography, size relative to zoning, and access in its valuation. The concluded value of Mr. Hayward's appraisal of \$120,000 was well supported by the adjusted sales, which indicated a value range of \$102,870 to \$128,750. (Exhibit A, pg. 43.) The Board finds use of the market approach to be appropriate in the valuation of vacant land, and the appraisal to be persuasive and sufficient to overcome Petitioner's assertion of incorrect value.

The Board was not swayed by Mr. Buetow's assessment that the site was not buildable or that Petitioner does not have legal access to the site. Based on the findings and conclusions presented, the Board finds that Petitioner presented insufficient probative documentary evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

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 23rd day of June, 2021.




BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


Sondra W. Mercier

Concurring Board Member:


Amy Williams
*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.


Casie Stokes