BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	**Docket No.: 79366**
Petitioner: **LONGVIEW VILLAGE INC.,** v. Respondent: **ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS.**	
AMENDED FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals ("Board") on February 24, 2021, Diane Devries and John DeRungs presiding. Attorney Mark A. Freirich appeared on behalf of Petitioner Jack Nesbitt, president of Longview Village Inc. Respondent was represented by Lynaia South, Esq. Petitioner seeks an abatement or refund of taxes, appealing the actual value of the subject property for tax years 2018 and 2019.

This Amended Final Agency Order is issued as a result of Respondent's Motion to Correct Clerical Error, filed July 8, 2021. The Board also considered Petitioner's Response, filed July 13, 2021. The Board has not found clerical errors in its June 8, 2021 Final Agency Order, nor changed its conclusion of value or its finding that Petitioner met its burden of proving the County value was incorrect. This order is issued solely to add to the Board's findings and conclusions, in order to clarify its calculations in reaching the final value it determined appropriate for the subject property.

EXHIBITS

The Board admitted into evidence Petitioner's Exhibits 1-4 and Respondent's Exhibits A-G.

DESCRIPTION OF THE SUBJECT PROPERTY

Outlot 2 of the Longview Highlands Subdivision in Steamboat Springs, Colorado
County Schedule No R8165347

Because of its size, the subject property is the increasingly rare 5.34 net (of open space/landscaping) acre vacant development tract in this part of Steamboat Springs. Zoned for multi-family development, a preliminary plan to build at least 110 new units has been proposed. It currently has access from a private drive only, by an easement from US Hwy 40. Accordingly, the City will require that 2,400 feet of High Point Drive be an improved and publicly dedicated street for its development to occur. The estimated cost of these off-site access improvements was over $1.3 million in 2014, and included the cost of constructing a required turn lane from US Hwy 40 with provision for only minor cost-sharing from the easement holder. Opponents of the property's development contend that it may violate the Skyline Ordinance, approved to preserve views in the area, which could reduce the allowed density unless Petitioner obtains a variance. These opponents have successfully delayed approval of a variance despite a favorable study prepared for the Petitioner.

The subject property's actual value, as assigned by the Board of County Commissioners ("BOCC") below and as requested by Petitioner and Respondent, are:

BOCC's Assigned Value:	2018: $1,007,860 2019: $1,890,000
Petitioner's Requested Value:	2018: $500,000 2019: $500,000
Respondent's Requested Value:	2018: $1,007,860 2019: $1,788,900

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 proceeding below may be presented to this Board for a new and separate determination. *Id*. However, in this appeal, the

Board may not impose a valuation on the property in excess of that set by the BOCC. § 39-8-108(5)(a), C.R.S. (2021).

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

Petitioner contended that neither the extraordinary cost of improving High Point Road nor the increased development costs resulting from neighborhood opposition to the project was taken into account in the County's valuation of the property for either tax year. Petitioner argued that the sale comparables selected by the County would be easier and less expensive to develop.

Petitioner presented the testimony of John "Jack" Nesbitt, principal of Petitioner Longview Village Inc., who testified in support of this assertion. Mr. Nesbitt testified, among other matters, to the development requirements and costs for the subject, and the community opposition to the development.

Petitioner also called Walter Magill, owner and principal of Four Points Surveying and Engineering as an expert witness. Mr. Magill testified that expected infrastructure costs for Respondent's sale comparables were lower than for the subject.

Respondent's four comparable sales were presented in expert testimony by Kevin Krause, employed by the Routt County Assessor's Office, who prepared a real estate appraisal of the property. After making various adjustments he concluded that the subject's unit value was $320,000 per acre as of June 30, 2016. That conclusion was closest to the indication yielded by Sale 2, which was not surprising since that comparable property not only was a 10 gross acre parcel like the subject, but abutted subject to the south. Sale 2's effective acreage was only 3.5 acres, but the proposed 73 units would result in a similar density as the subject, of 21 units per acre.

Mr. Krause then reported projected infrastructure costs for Comparables 1, 2 and 3 in the range of $53,500 to $67,600 per unit based on his research. Those projects planned 28, 73 and 43 total units respectively. When projected infrastructure costs were then divided by their respective unadjusted sales price, it showed that those costs were 2.5 to 3.3 times each sale price. When Mr. Krause selected a ratio of 2.5 and applied it to the subject's projected infrastructure costs at $4.268 million, it supported his value conclusion at $320,000 per acre. He believed that this refuted the

claim by the Petitioner that the subject's offsite and onsite infrastructure costs, including building High Point Road, were higher than those projected for the comparables.

By contrast, Mr. Magill testified that his research and personal knowledge showed infrastructure costs for Respondent's comparables would instead be closer to half of what was reported by the Respondent. Unlike the subject, Respondent's comparables did not require off-site improvements (such as the construction of a road). The Board accepts Mr. Magill's cost estimates that put Comparables 1, 2 and 3 in the range of from $24,700 to $35,700 per unit. Giving most weight to the indication of $24,700 per unit for Sale 2, (because it abuts the subject), suggests that infrastructure costs should be close to $2.717 million (110 units x $24,700) for the subject. Respondent's projected total infrastructure costs of $4.270 million for the subject, compared to $2.717 million, results in a $1.553 million difference that is in line with what the Petitioner has estimated to build High Point Drive. The Board finds this cost represents an extraordinary cost that a buyer would expect in the form of a concession or discount were the subject offered for sale.

Respondent agreed the projected cost to build High Point Drive is at least $900,000, and as much as $1,800,000. (Exhibit A, p. 21.) As a result, the Board finds that an additional downward adjustment to the $1,425,000 sale price of Respondent's Sale 2 is necessary. A conservative adjustment of $900,000, spread out over the 73 units of Sale 2, results in a per unit downward adjustment of $12,329, an indicated value per unit of $7,192, and a total indicated value of $525,000.

The Board finds that an additional downward adjustment of **at least** $10,000 per unit to Respondent's comparable sales would account for the extraordinary cost to build High Point Drive. Application of this additional adjustment to Respondent's sales results in an, indicated range of values that supports Petitioner's recommended value of $500,000 for both tax years.

Through the presentation of Mr. Magill's expert testimony about infrastructure costs, the Petitioner convinced the Board that the County failed to account appropriately for these costs in its valuation of the subject, and met its burden of proving that the assigned value for tax year 2018 and 2019 is incorrect, and showed that the correct value is $500,000.

ORDER

The petition is **GRANTED**. The Routt County Assessor's Office is ordered to update its 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.

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).

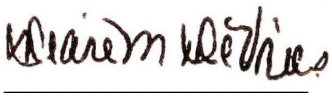
DATED and MAILED this 28th day of September, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

John DeRungs

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 order of the Board of Assessment Appeals.

Casie Stokes