| BOARD OF ASSESSMENT APPEALS,<br>STATE OF COLORADO<br>1313 Sherman Street, Room 315<br>Denver, Colorado 80203 | Docket Nos.:<br>75588, 75589 |
|---|---|
| Petitioner:<br><br>**CHITI LLC,**<br><br>v.<br><br>Respondent:<br><br>**SUMMIT COUNTY BOARD OF EQUALIZATION.** | |
| **ORDER** | |

**THIS MATTER** was heard by the Board of Assessment Appeals on January 28, 2020, Diane M. DeVries and Samuel M. Forsyth presiding. Petitioner was represented by its manager, Nirav Shaw. Respondent was represented by Cameron Turpin, Esq. Petitioner is protesting the 2019 actual value of each of the two subject lots. On January 28, 2020, the Board consolidated the hearings on Docket Numbers 75588 and 75589 into one hearing which was held on that same day. The Board now consolidates the orders on those two docket numbers into one written order.

## EXHIBITS AND WITNESSES

The Board admitted into evidence Petitioner's Exhibits 1-5, Respondent's Exhibits A and B, and expert testimony by Respondent's witness Michael A. Peterson, Certified General Appraiser employed by the Summit County Assessor's Office.

## DESCRIPTION OF THE SUBJECT LOTS

Docket No. 75588
Lot 12, Block 2, Quandary Village Subdivision #2, 193 Carroll Lane
Teller County Schedule No.: 2800901

Docket No. 75589
Lot 13, Block 2, Quandary Village Subdivision #2, 193 Carrol Lane
Teller County Schedule No.: 2800902

Each subject lot consists of 0.496 acres, or approximately 21,780 square feet, of vacant land. The Summit County Assessor ("Assessor") categorizes each lot as "May be Unbuildable." Each parcel is significantly impacted by wetlands.

The actual values of each subject lot, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner, are:

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| CBOE's Assigned Value: | $17,359 |
| Petitioner's Requested Value: | $ 125 |

**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, 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**

In valuing residential properties for tax purposes, value must be determined solely by the market approach to appraisal. 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.

While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Company v. Arapahoe County Bd. of Equalization*, 813 P.2d 768, 770 (Colo. App. 1990). Furthermore, equalization evidence, by itself, does not satisfy the requirement to provide comparable sales with appropriate adjustment. As the Colorado Supreme Court stated in *Arapahoe Cty. Bd. of Equalization v. Podoll*, 935 P.2d 14, 18 n.12 (Colo. 1997):

> While the valuation of property similarly situated is credible evidence at trial pursuant to § 39-8-108(5)(b), C.R.S. (1994), a disparity in percentage increases in the assessments of neighboring properties does not, by itself, warrant assessment reduction.

Accordingly, the Board can only consider equalization evidence as support for a value determined using the market approach. *See id.*

## THE BOARD'S FINDINGS AND CONCLUSIONS

The assigned value of each subject lot increased from $7,263 in tax year 2017 to $17,359 in tax year 2019. The status of each lot as "May be Unbuildable," as determined by the Assessor, did not change. Petitioner disputes the adjustments and model aspects that the Assessor uses to appraise unbuildable lots. Petitioner introduces one unbuildable lot in Arapahoe County and the apparent manner in which Petitioner believes this unbuildable lot is valued by the Arapahoe County Assessor. Petitioner argues that the Arapahoe County appraisal methodology in valuing that unbuildable lot represents the "industry standard" or industry best practice, and should be followed by the Summit County Assessor as well.

The Petitioner provided only three data points for this Board to review and consider. Two of the 'comparable' properties offered by the Petitioner are improved sites in Arapahoe County (Ex. 3 and 4). For each of these two 'comparable' properties, Petitioner extracted the land value determined by Arapahoe County (Ex. 3 and 4). Petitioner's final 'comparable' is an unbuildable site proximate to the improved sites in Arapahoe County (Ex. 2). Petitioner determined the ratio of the actual value set by Arapahoe County for the unbuildable vacant site to the allocated actual value of the land component of each improved site. For each improved site, the ratio of value is 0.7%. Petitioner then applied this 0.7% factor to the value assigned by the Summit County CBOE to arrive at a value of the subject.

Petitioner's case is flawed in several aspects. First, none of the data points relied upon are market-based sales. In this regard, the Board finds that Petitioner's proposed appraisal method violates an established tenet of the sales comparison approach to appraisal (also known as the market approach) that is expressly required by section 39-1-103(8)(a)(1), C.R.S. (2019). Second, Petitioner offers no analysis to compare market dynamics that differentiate two disparate markets represented by Arapahoe County, in which his proposed 'comparable' properties are located, and Summit County, in which the subject lots are located.

Respondent states that the subject sites may be unbuildable as the majority of those sites may be significantly impacted by potential wetlands. Respondent asserts that the county department that determines the buildable nature of sites has not made a determination of the buildable/unbuildable nature of the subject sites. Respondent is valuing each subject site as if it is unbuildable.

Respondent identifies three comparable sales proximate to the subject that sold in the mandated data collection period. The sales all share the same lot size, similar topography and similar view. All three sales had recording dates within 2 months of the appraisal date. Two of the sales received market condition adjustment for 1 month, and the third did not need a time adjustment. All three sales received a negative 5.3% adjustment to account for 'Potential Wetlands' and a negative 70% adjustment to account for the unbuildable nature of the subject. Respondent stated that there were no sales of unbuildable sites. Regarding the support for the 70% adjustment, the Respondent stated: "The Assessor's Office developed the 70% downward adjustment applied based on historical sales of 'May be Unbuildable' building sites from prior valuation periods." After adjustments, the resulting values of the three comparables were $26,676 for Sale One, $21,079 for Sale Two, and $17,359 for Sale Three. Respondent reconciled to the lowest indicator of value, $17,359.

The Board finds the analysis of the Respondent compelling and credible. Respondent identifies three sales of buildable sites that are proximate, timely and similar to the subject sites. Respondent identifies key attributes that distinguish the comparables from the subjects, most notably that the subject sites may be unbuildable and the comparable sales are buildable. Respondent applies appropriate quantified adjustments to these attributes which are explained in the body of the appraisal.

## ORDER

The Petitions are 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.

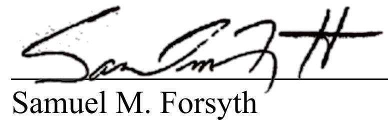
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S. (2019).

**DATED and MAILED** this 23rd day of April, 2020.

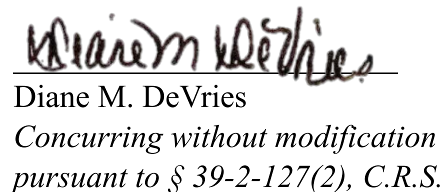
**BOARD OF ASSESSMENT APPEALS**

Drafting Board Member:



Samuel M. Forsyth

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