

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76590</b>
Petitioner:  <b>MATTHEW J. FONDIE,</b>  v.  Respondent:  <b>SUMMIT COUNTY BOARD OF EQUALIZATION.</b>	
<b>ORDER</b>	

**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, Certified General Appraiser employed by the Summit County Assessor’s Office.

**DESCRIPTION OF THE SUBJECT PROPERTY**

1331 Discovery Hill Drive, Breckenridge, CO 80424  
Summit County Schedule No.: 6512411

The subject property is a single-family home site of 1.27 acres, and it is classified as vacant land. The subject property’s highest and best use is residential use. The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

CBOE’s Assigned Value:	\$419,087
Petitioner’s Requested Value:	\$266,750

## **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 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. 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 is in error regarding the valuation of the subject property.

Petitioner disputed the comparable sales utilized within the appraisal report prepared by Respondent's witness. Petitioner emphasized Respondent's witness relied upon sales not similar to the subject because of the difficulties of construction on the subject lot. Petitioner testified this conclusion was supported by Petitioner's building experience and conversations with other builders in the area.

The Board finds the position taken by Petitioner is not supportable. Respondent's witness considered the sale cited by Petitioner as well as four additional sales all of which were located within the same subdivision as well as on the same access road. All the sales occurred from February 2016 to March 2018 within the extended base period allowed by statute.

Petitioner also disputes the assessed valuation with respect to various other characteristics of the subject property to which he testified. Petitioner questioned the qualifications of Respondent's witness as a builder. Further, the Petitioner argued the Respondent's witness did not walk each of the comparable sales and had therefore not considered important, relevant factors.

The Board finds that Respondent's appraisal report is 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 comparable sales and the required date of valuation. In comparison, Petitioner failed to consider the influence of market conditions and made no adjustment to his single comparable for other market related property features. The Board finds Respondent's appraisal report persuasive.

### **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.

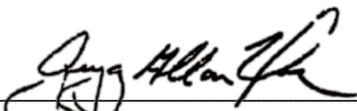
Section 39-8-108(2), C.R.S. (2019).

**DATED and MAILED** this 29<sup>th</sup> day of April, 2020.

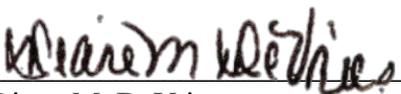
**BOARD OF ASSESSMENT APPEALS:**



Drafting Board Member:

  
\_\_\_\_\_  
Gregg Near

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.

  
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Jacqueline Lim