

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner:  <b>DENNIS CLAUER,</b>  v.  Respondent:  <b>SUMMIT COUNTY BOARD OF EQUALIZATION</b>	<b>Docket No.: 76629</b>
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals on April 30, 2020, Debra Baumbach and Sondra Mercier presiding. Petitioner appeared pro se. Respondent was represented by Cameron Turpin, Esq. Petitioner is protesting the 2019 actual value of the subject property.

**EXHIBITS AND EXPERT WITNESSES**

The Board admitted into evidence Respondent’s Exhibit A, and expert testimony by Michael W. Peterson, Chief Appraiser with the Summit County Assessor’s Office.

**DESCRIPTION OF THE SUBJECT PROPERTY**

**465 B Hammerstone Lane, Frisco, Colorado 80443  
Aka Lot 29, Water Dance Sub #1  
Summit County Schedule No. 1102746**

The subject is a 2,892-square foot, attached, duplex residence situated in the Water Dance Subdivision. The residence was constructed in 1994, and is of good quality construction and in average condition for its age. The subject property’s actual value as assigned by the County Board of Equalization (“CBOE”), Respondent’s recommended value, and Petitioner’s requested value, are:

CBOE’s Assigned Value:	\$952,681
Respondent’s Recommended Value:	\$936,887
Petitioner’s Requested Value:	\$835,000

## **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, 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 board of equalization (CBOE) proceeding may be presented to this 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.

## **APPLICABLE LAW AND AUTHORITATIVE SOURCES**

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 of 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 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 2015, p. 141.)

To identify comparable sales, county assessors are required to collect and analyze sales that occurred within the 18-month period prior to July 1 immediately preceding the assessment date. § 39-1-104(10.2)(d), C.R.S. For tax year 2019, this 18-month period ends on June 30 of 2018. *See id.* If sufficient comparable sales are not available during this 18-month period to adequately appraise the property, then the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *Id.*

### **FINDINGS AND CONCLUSIONS**

After consideration of the testimony and exhibits presented, the Board makes the following findings and conclusions.

The Board notes that Mr. Clauer is a real estate professional, with 30 + years of brokerage experience in Summit County, including experience selling properties in the subject property's subdivision. The Board recognizes that Mr. Clauer has some expertise in the valuation of real estate, albeit not as a licensed appraiser. The Board also notes that Mr. Clauer is a long-time resident of Frisco and has been a resident of the subdivision in which the subject property is located since its inception. The Board found Mr. Clauer's testimony to be credible and compelling.

Respondent's witness, Mr. Peterson, completed a site-specific appraisal of the subject property and produced an Appraisal Report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rule 2-2(a). Mr. Peterson relied on comparable sales to estimate market value for the subject property.

Mr. Peterson considered five sales from the Water Dance Subdivision in the market approach. The sales transacted from August 2015 to October 2016; including one sale from the extended base period. Prior to adjustment, the data indicated a price range of \$875,000 to \$1,064,500. All five sales were smaller than the subject and required significant upward adjustment for size. The sales also required large downward adjustments for superior locations adjacent to open space and the lake. After adjustment, the data indicated a value range of \$832,796 to \$953,689, with a median value of \$936,887. Mr. Peterson concluded to a value equal to the indicated median, at \$936,887.

Mr. Peterson testified that comparable sales 1 and 3 offered locations most similar to the subject, as the influence of open space and lake were offset by proximity to Highway 9. Mr. Clauer also testified that in his experience units located along Highway 9 had significantly lower values. The Board was convinced by the evidence presented that a two-tiered market exists in the subject's neighborhood, with units located near Highway 9 inferior to those enjoying lake frontage and no highway influence. The Board therefore gives primary weight to Respondent's sales 1 and 3, which indicated a value range for the subject property of \$832,796 to \$840,130, after adjustment.

The sales considered by the parties occurred in 2015 and 2016, early in the base period. Mr. Clauer estimated that values had increased approximately 14% between the sales dates and the end of

the base period. However, Mr. Peterson analyzed sales of 460 townhome units located within the county and determined that the data was inconclusive for the Water Dance Subdivision. Mr Peterson's analysis of 460 sales would not statistically support an adjustment for change in market conditions. The Board therefore finds no reason to apply any further adjustments to Respondent's sales 1 and 3.

Both Mr. Clauer and Mr. Peterson testified regarding the sale of a property addressed as 495A Hammerstone Lane, a duplex unit with the same floor plan and non-lake-front location as the subject. This property sold sale in December 2016 for \$800,000. Mr. Peterson reported that he had investigated the sale of this property. Based on confirmation with the buyer, Mr. Peterson reported that no realtors were involved in the sale and that the property was not listed for sale on any website or in any newspaper. The sale was deemed by the Summit County Assessor to not be a valid, arms-length sale, which is required by statute and standard appraisal practice. For this reason, Mr. Peterson did not consider the sale in the valuation of the subject. The Board concurs with Mr. Peterson's conclusion. Inherent in the definition of market value is the requirement that comparable sales reflect market value "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." As the sale occurred without being listed on the open market and without the assistance of a real estate agent, it does not reflect the requirements of a valid sale for use in an appraisal. The Board gives minimal weight to this sale.

Based on the evidence presented, the Board finds that Petitioner met his burden of proving that the subject property was incorrectly valued for tax year 2019. Relying on the testimony of Mr. Clauer and Mr. Peterson, and on the values indicated by Respondent's sales 1 and 3 after adjustment, the Board grants Petitioners request for a reduction in value to \$835,000.

### **ORDER**

The petition is granted. Respondent is ordered to reduce the 2019 actual value of the subject property to \$835,000.

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.

*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 9th day of November, 2020.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



Sondra W. Mercier

Concurring Board Member:



Debra Baumbach

*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