

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78652
Petitioners: CAROL HUDAK BOHN and EDDIE ARTHUR BOHN, v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION.	
INTERIM ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 5, 2020, Diane M. DeVries and Louesa Maricle presiding. Petitioners were represented by Thomas E. Downey Jr., Esq. Respondent was represented by Meredith P. Van Horn, Esq. and Christopher McMichael, Esq. Petitioners protest the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioners’ Exhibits 1 and 2, and Respondent’s Exhibits A and B.

DESCRIPTION OF THE SUBJECT PROPERTY

A Site on the East Side of Lowell Boulevard, North of I-76
Unincorporated Adams County, Colorado
Adams County Account No.: R0103239

The subject property is an approximately 9.78-acre site zoned I-1 in Adams County. The Assessor’s records do not show an address for the property. The majority of the subject site is occupied by approximately one-half of a small lake created as a result of a previous gravel pit operation on property. The other half of the lake is on a separate parcel whose valuation is not at issue in this case. That parcel also contains Petitioners’ residence. The irregular, flagpole-shaped site has a dirt access road that extends from Lowell Boulevard east to the primary portion of the site. The entrance to the road is the only frontage the subject property has on Lowell Boulevard. The property does not have any building improvements, nor, in its condition as of the assessment date, does it contain sufficient land upon which improvements could be built. There are narrow slivers of land along the north and east sides of the lake, but they are not big enough for residential

development. The property is also located entirely in a flood zone. Adjacent uses include active Burlington Northern and Union Pacific railroad lines, and the RTD FasTracks G Line commuter rail line that are all above grade from the subject site to the north; Clear Creek is to the east; a hemp crop business operation with both greenhouse and outdoor grow areas is to the south; and a continuation of the lake on the subject site is to the west.

The subject property’s actual values, as assigned by the Assessor and upheld by the County Board of Equalization (“CBOE”) below, and as requested by Petitioners, are:

CBOE’s Assigned Value:	\$205,380
Petitioners’ Requested Value:	\$48,900

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 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

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, an assessor must also 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).

ARGUMENT

I. Petitioners' Argument

The Board heard the testimony of Petitioner Mr. Eddie Bohn. Mr. Bohn has owned the property since 1975. In 1975, Mr. Bohn and other individuals purchased the subject property, and in 1997, Mr. Bohn and his wife purchased the subject property. During his 45 years of ownership, Mr. Bohn has extensively explored the development possibilities for the lake. Mr. Bohn testified the entire property is located in a flood plain. He opined that the most significant negative impact on potential development of the site is its location within a flood plain area, which would require a prohibitively expensive investment to raise the land out of the flood plain to allow it to be developed for residential or other use. He concluded it is not financially feasible to develop the property. He testified he is unable to add a dam to stop water flow onto the site because of the negative impact it would have on adjacent properties.

Mr. Bohn testified he and his wife run a small fishing club operation at the lake, which has been in operation for many years. Petitioners charge members an annual fee to access and use the lake. Beginning in 1985, running additional (irrigation) water into the lake to keep it vibrant for fishing was no longer allowed, reducing its attractiveness for fishing. Only small boats can be operated on the lake, and water skiing is not permitted. Therefore, the use of the lake for recreational purposes is significantly limited.

Petitioners contend the dramatic increase in value from the \$48,900 value assigned for tax years 2017 and 2018, to the assigned value of \$205,380 for tax years 2019 and 2020 is not reasonable and that Respondent, in the appraisal it offers to support the County Board of Equalization's value, has relied on comparable sales that are much larger than the subject and have more developable land area. Petitioners requested the value remain at \$48,900.

II. Respondent's Argument

Only the market approach to value was presented by Respondent. The property does not have building improvements, so the cost approach is not applicable. Although Respondent is aware of the small fishing club use of the lake, Respondent's appraiser did not consider that use in her analysis. Therefore, the income approach is not useful to determine value.

Respondent presented expert testimony by Valerie Ferguson, a Certified Residential Appraiser in Colorado who is employed by the Adams County Assessor's Office to appraise all property types. The three comparable sales presented by Respondent range in price from \$494,500 to \$4,000,000, and range in land area from 16.5310 to 44.5904 acres. On a price per square foot basis, the sale prices ranged from \$0.50 to \$3.83. All three sales have lake features created by previous gravel mining on the site. Ms. Ferguson testified she valued the subject "as used" – according to its current use as of the assessment date. She stated she did not value it according to

its development potential, as “land ready to develop.” Ms. Ferguson testified in relevant part that the three comparable sales were the only sales during the base period and extended base period with lakes that resulted from gravel pit operations. The witness testified she concluded that an adjustment for changing market conditions from the time each sale occurred to the effective date of value was not necessary. The witness presented evidence that Sales 1 and 2 are within flood zone areas and concluded they are similar to the subject in that respect. The witness cited a lack of sufficient data to estimate qualitative adjustments to each sale, so she relied on qualitative adjustments. In response to questions, the witness testified all three comparable sales have more street frontage than the subject, better access, and more land area than lake area compared to the subject. The comparable sales have more land than lake, unlike the subject. The witness testified she did not find evidence that any of the three properties is still being mined for gravel. Based on her appraisal analysis, the witness concluded to a value for the subject property of \$0.50 per square foot of land and a total value \$213,900. Respondent requested that the assigned value of \$205,380 be affirmed.

FINDINGS AND CONCLUSIONS

It is uncontroverted that the subject property is located in a flood plain. The Board finds Petitioners’ claim credible that the subject property’s development potential is adversely affected by the lack of significant land areas next to the lake, and that the flood plain and floodway areas affecting the property are significant obstacles to changing the use of the property. The Board concludes that although Respondent has assigned a property type to the subject site of “Vacant Residential Land,” no evidence was presented to support that residential development is feasible.

The Board finds rebuttal documents provided by Petitioners from the Adams County Assessor’s website show that Respondent’s Sales 1 and 3 have property type classifications of “Commercial” and Sale 2 has a classification of a “Producing Mine”. Further, the Board finds the rebuttal documents raise a question about whether the land area used by Respondent’s witness for Sale 2 is the complete site. The questions about whether Sale 2 is an active gravel mine, combined with remaining questions about the possible subdivision of the site, the land area included in the purchase, and why a much higher price was paid for Sale 2 compared to Sales 1 and 3, persuades the Board that Sale 2 does not produce a credible indication of value for the subject property.

The Board finds the conclusions reached by Respondent’s witness that Sales 1 and 3 are both inferior to the subject property because they are significantly larger sites are based on the valuation premise that larger parcels typically sell for less per square foot of land area than smaller parcels. The Board finds that while that can be valid, site size alone does not consider the advantage of potential utility of each site because they are larger and have more land area not covered by a lake than the subject. The Board finds further that the evidence presented that Sale 3 is not adversely affected by flood plain indicates it is superior in that respect compared to the subject. The Board did not find evidence that Respondent’s witness analyzed and ruled out those physical factors in concluding to qualitative adjustments to the sales for differences in site size and street frontage. Respondent’s witness concluded to a value per square foot of \$0.50 for the subject property, which is the same as the time adjusted sale price for Sale 3, the lowest price per square foot among the sale comparables. However, the Board finds that the price per square foot for Sale 3 should be adjusted downward for the superior characteristics of not being affected by flood plain

or floodway, and the much larger land area that property has apart from the lake resulting in superior utility potential of that site. Those adjustments would result in a lower conclusion of value for the subject property.

The Board determines that potential development of the subject property for a different use is less feasible than for Respondent's comparable sales.

The Board concludes the qualitative adjustments made to Respondent's Sales 1 and 3 do not adequately reflect the differences between them and the subject property. Therefore, the value indications for those sales are not representative of the subject property's value under the market approach.

For the reasons stated above, the Board was not convinced by Respondent's appraisal that the Assessor's value was supported.

Petitioners have shown by a preponderance of the evidence that the subject property was incorrectly valued for tax year 2019. The Board was persuaded that it is financially unfeasible to develop the site, and that it likely has no marketable value to anyone except the owner of the adjacent residential parcel – currently Petitioners. However, the Board was not presented with sufficient evidence to arrive at a value for the subject.

Given that Petitioners have met their burden and neither party has presented a supportable value, this matter is remanded pursuant to the direction given by the Supreme Court of Colorado in its opinion in *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (Colo. 2005) (“While the BAA members’ expertise enables them to determine from the evidence presented by the taxpayer whether the county’s valuation is incorrect, the taxpayer’s evidence may or may not be sufficient to further establish the subject property’s value for tax purposes. Thus, the BAA may properly remand the matter for an accurate assessment by the county, which is charged with the duty of assessing properties in accordance with the statutory mandate in the first instance.”)

ORDER

This case is **REMANDED** to the Adams County Assessor's Office for a new assessment for tax year 2019.

The Adams County Assessor's Office shall undertake a new appraisal of the subject property. The Assessor's Office should first develop a highest and best use analysis in order to guide the selection of comparable sales and the valuation of the subject property. *See* Assessors' Reference Library, Vol. 3, Ch. 2, Page 2.3 (“Unless otherwise directed by law, valuation for ad valorem property taxation should be based on a property's highest and best use.”) Of note to the Board is that it is financially unfeasible to develop the subject; it is undevelopable vacant land, predominantly covered by a portion of a lake formed in a former gravel pit. If the Assessor's Office selects the same comparable sales, adjustments for dissimilar development potential and other dissimilarities with the subject must be made. The Assessor's Office must demonstrate it considered the possibility that the subject has no discrete value – that is, no value except to the owner of the adjacent residential parcel, as an adjunct parcel. In this way, the subject, taken

together with the adjacent residential parcel, may be akin to a residentially improved parcel with excess land. The adjacent residential parcel may be considered integral to the subject property, given the undevelopable nature of the subject, the access to the subject, and the shared lake (one-half of a lake is located on the subject, and the other half is located on the adjacent residential parcel). The Board does not order the valuation of the parcels collectively, but references for the Assessor's consideration section 39-5-104, C.R.S., which states: "Each tract or parcel of land and each town or city lot shall be separately appraised and valued, except when two or more adjoining tracts, parcels, or lots are owned by the same person, in which case the same may be appraised and valued either separately or collectively."

Respondent shall provide the new assessment to Petitioners and the Board of Assessment Appeals no later than **May 1, 2021**. If Petitioners disagree with the new value determined, they shall file notice with the Board by no later than **May 31, 2021**. Upon receipt of such notice, the Board will set this matter for a new hearing.

The Board retains jurisdiction in this matter, pending its determination of the subject property's valuation for tax year 2019.

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 6th day of April, 2021.

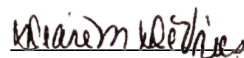
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Louesa Maricle

Concurring Board Member:

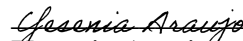


Diane M. DeVries

*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.


Yesenia Araujo