BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioners: **NATALIE and STEPHEN GOLDMAN** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION**	**Docket No.: 78297**
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals ("Board") on August 6, 2020, Gregg Near and John DeRungs presiding. Petitioner Stephen Goldman appeared pro se on behalf of Petitioners. Respondent was represented by Charles T. Soloman, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Petitioners' Exhibit 1 and Respondent's Exhibit A.

DESCRIPTION OF THE SUBJECT PROPERTY

2033 So. Clayton Street, Denver, CO 80210
County Parcel #05252-10-019-000

The subject property is 7,500 square feet of land improved with two residential structures totaling around 3,140 square feet, located in the University Park neighborhood, just a few blocks from the University of Denver. At the front of the subject property's lot is a two level, ranch style house built in 1952, consisting of a 1,300-square foot, two bedroom, one bath main level, and a 1,200 square foot two bedroom, one bath garden level. Practically speaking, this dwelling can only be occupied or rented out as one unit since it has no separate entrance to each level and requires soundproofing for privacy. To the rear of the subject property's lot, on the public alley, is a turn-of-the-last century 640-square foot, two-bedroom, one-bath single level home with an attic. Both residential structures are in average condition.

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioners and Respondent, is:

CBOE's Assigned Value:	$825,000
Petitioners' Requested Value:	$642,000
Respondent's Requested Value:	$825,000

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

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

The Petitioners object to the County's method of valuing their property, claiming that the County "double counted" the subject property's land value contribution (determined to be $339,200 for other properties on their block) to arrive at the $825,000 value.

Respondent provided a restricted appraisal prepared by David Tancredi, a Certified Residential Appraiser employed by the Denver County Assessor's office. Mr. Tancredi valued the subject property by allocating a portion of the total site area – in this case, the total site area being the 7,500 square foot lot – to each of the improvements, conducting two separate market approaches to value, and then adding the resulting values together.

To begin, Mr. Tancredi allocated 5,000 square feet of site area at the front part of the subject site (2/3 of the total 7,500 square foot lot at the subject property) to the ranch house, which he referred to as "the duplex." He then identified sales of three duplex properties with 1,894 to 3,918 square feet of net rentable area, each on 6,250 square feet of land, and adjusted their sale prices to reach an indicated value of $600,000 for the subject's 2,500-square foot ranch house. Mr. Tancredi did not adjust the comparables' sale prices for the difference between their site areas and the subject's.

Mr. Tancredi then separately valued the smaller 600-square foot single level home at the rear of the lot, which he referred to as "the accessory dwelling unit" or "ADU." He allocated 1/3 of the subject property's total site area to it, comprising 2,500 square feet at the rear of the subject property's lot. He identified sales of three comparable homes, with 825 to 947 square feet of net rentable area, each on 6,350 square feet of land. He adjusted the comparables' sale prices to reach an indicated value of $285,000 for the subject's single level home. Mr. Tancredi adjusted each of the comparables' sale prices downward by 5% for the difference in site area.

Finally, Mr. Tancredi added these two values to arrive at a value for the subject property of $885,000.

The Board finds Respondent's value analysis to be unpersuasive in several regards.

Mr. Tancredi made a 5% ($18,573) downward adjustment to the sale price of the three comparable sales he chose for his "ADU sales comparison grid," in which he valued the single level home. He made this adjustment due to the difference in the 2,500 square foot site area he assigned to the ADU and the 6,350 square foot site area of each of the comparables. However, he could not articulate market support for why he chose a 5% adjustment. He testified that he encountered difficulty in extracting a firm, appropriate adjustment percentage from the market in an attempted paired sales analysis, partially because he could not find sales with the small land area he allocated to the ADU. The lack of a supportable explanation for the adjustment gives validity to Petitioners' claim that the contribution of land to Respondent's resulting market value of $885,000 is based on 12,600 square feet (the 6,250 square feet of land associated with each of his ranch comparables added to the 6,350 square feet of land associated with each of his ADU comparables). This is almost twice the subject's land area of 7,500 square feet.

The Uniform Standards of Professional Appraisal Practice (USPAP) defines a hypothetical condition as: "*A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.*" In essence, a hypothetical condition is something contrary to what exists as of the effective date of value. A hypothetical condition must be disclosed in an appraisal, and use of the hypothetical condition must result in a credible analysis.

The Board finds that Mr. Tancredi conducted an appraisal that relied on the hypothetical condition of land allocation between the two improvements that exist on the property. The allocated site areas he created, and based on which he selected sales comparables, are contrary to what actually exists. The Board finds that Respondent's use of this hypothetical condition did not result in a credible analysis.

In this case, Mr. Tancredi's time adjusted comparable duplex sales data (his sales comparables for the ranch house or "duplex"), yielded a value range for the ranch house of $592,372 to $753,725. Petitioners' requested value of $642,000 falls squarely within this range. The Board favors use of this sales data alone to value the subject property as a whole. In so concluding, the Board notes the subject property's suitability as a two-unit rental, with a total of 3,140 net rentable square feet on 7,500 square feet of land.

We find therefore that the Petitioners have met their burden of proving that the assigned value for tax year 2019 is incorrect.

ORDER

The Board grants Petitioners' petition and finds that the value of the subject property for tax year 2019 is $642,000.

Respondent is ordered to reduce the 2019 actual value of the subject property to $642,000.

The Denver County Assessor's Office is directed to change 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 8th day of September, 2020.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

John DeRungs

Concurring Board Member:

Gregg Near
Concurring without modification pursuant to § 39-2-127(2), C.R.S.

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.

Casie Stokes