

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79048
Petitioners: RUDOLPH W. HARBURG and KATHLYN J. HARBURG, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 26, 2021, Louesa Maricle and John DeRungs presiding. Petitioner Rudolph Harburg appeared pro se on behalf of Petitioners. Respondent was represented by Michael Koertje, 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, B and C.

DESCRIPTION OF THE SUBJECT PROPERTY

1030-1035 Mapleton Avenue, Boulder, CO 80304
Schedule #R0002069

The subject property is a 13,319-SF site in the Mapleton Historic District of Boulder. It is improved with a one-story ranch style duplex residence built in 1898 that operates as a rental property. The west unit at 1030 Mapleton is 1,364-SF with a 3-bedroom 2-bath layout and has no basement. The east unit at 1035 Mapleton is 990-SF with a 2-bedroom 1-bath layout on the 495-SF main level and kitchen and third bedroom and a bath in the 495-SF walk-out basement. The total is 1,859 SF. It has a two-car detached garage.

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

CBOE’s Assigned Value:	\$1,400,000
Petitioners’ Requested Value:	\$1,100,000

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, in this appeal, 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 (2020).

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

Petitioners believed that by not taking into consideration the historic district regulations at this location, their property has been overvalued. They report that they prevent them from making the alterations needed to maximize the rental value of their property. Six comparables were presented, of which Sales 1 and 6 similarly lie on or near Broadway about ½ mile to the north. Petitioners' Sale No. 1 at 1323 Balsam is by far the largest duplex found at 2,570 SF, but it lacked a finished basement and was otherwise most similar by effective age, condition and land area at 10,000-SF. Sale No. 6 at 2935 Broadway is smaller at 1,534-SF and its site was half that of the subject.

Respondent presented expert testimony by David A. Martinez, employed by the Boulder County Assessor's Office, who selected five comparables. Sales 1 and 2 were also proximate to the subject property and in the Mapleton Historic District. Comparable 1 yielded a sale price of over \$2 million, likely an outlier because its effective age at 20 years was less than half of what was reported for the remaining sales. Sale 2 at \$1.24 million was at the lower end of the indicated value range and within 11% of Petitioners' recommended value. Respondent's other three sale prices were at least 30% higher because of their superior location within a few blocks of the CU campus.

Mr. Martinez also made adjustments to Petitioners' comparable sales in Respondent's Exhibit B to show that the needed adjustments exceeded the adjustments required for Mr. Martinez's selected comparables, which he asserted indicated Petitioners' comparable sales were less comparable to the subject. But the Board finds that the sale of only two comparable duplex properties (Respondent's Sales 1 and 2) found within the historic district is insufficient evidence to support the upward adjustment of \$75,000 Mr. Martinez made to the three duplexes outside the district. When recalculated, the total adjustment to Petitioners' Sales 1 and 6 was less than for Respondent's Sale 2. Indeed, Respondent's adjustments to the Petitioners' comparable sales produced indications of \$1.07 million and \$1.16 million, or close to the Petitioners' recommended value at \$1.1 million.

Because Respondent had insufficient support for making upward adjustments for the subject's location in a historic district and made no downward adjustment for those three sales that were closer to the CU campus, we find that the Petitioners have met their burden of proving that the assigned value for tax year 2019 is incorrect. The Board finds the correct value for the subject for tax year 2019 is Petitioners' requested value of \$1,100,000.

ORDER

The petition is **GRANTED**. The Boulder County Assessor's Office is ordered to update 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.

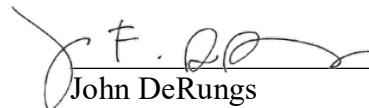
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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. (right to appeal on an abatement petition).


DATED and MAILED this 4th day of May, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


John DeRungs

Concurring Board Member:


Louesa Maricle
*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

Yesenia Araujo

