BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79081
Petitioner: **KEN MALO,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals ("Board") on October 21, 2020, Gregg Near and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Paige Arrants, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Respondent's Exhibit A. No exhibits were offered by Petitioner.

DESCRIPTION OF THE SUBJECT PROPERTY

519 Adams St., Denver CO 80206
County Schedule No.: 05015-28-014-000

The subject property is a 6,250 square foot site improved with a single family residence as of the assessment date of January 1, 2019. It is located in the Cherry Creek neighborhood in Denver. The zoning is G-RH-3. The subject improvement is 818 square feet. The original age of construction was 1946. 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:	$ 1,187,800
Respondent's Recommended Value:	$ 1,063,500
Petitioner's Requested Value:	$ 850,000

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

Petitioner testified that he did not believe that the actual value set on the property was accurate or equitable. E-mails to Denver County were referenced but not provided by the Petitioner for this hearing. Petitioner did not present any exhibits for the record to be reviewed by the Board. Petitioner offered testimony concerning the sales of two comparable properties for the Board's consideration.

1) 541 Monroe St. sold for $841,000 on October 17, 2017. This property sits on a 6,250 square foot lot.

2) 562 Steele Street sold for $800,000 on May 1, 2018. This sale sits on a 6,250 square foot lot. This sale is also analyzed in Respondent's appraisal.

Petitioner provided no other descriptive attributes for these sales that would enable comparison with the subject property. As compared to the subject, he believed the properties to be of similar lot size, located in the same or a similar neighborhood, experiencing similar market demand, and believed the improvements to be of similar age and in similar condition. Petitioner provided no comparable market grid with adjustments to the sale prices for differences between the sales and the subject.

Petitioner believed that Respondent's comparable 1 should be disqualified because the sale was finalized 20 days prior to the 2-year data collection period. Petitioner also believed that comparables 4 and 5 used by Respondent were inappropriate because the lot sizes are smaller than the subject. In addition, Petitioner did not believe it was appropriate to value the subject as if it were vacant, considering that there is an improvement on it and that he intends to continue the use as it is currently. He stated that to value use differently that the current use should not be allowed. Finally, Petitioner testified that he identified several similarly situated properties in the subject neighborhood which have lower land values than determined by the Denver County Assessor for his property – he believed that this was not fair. The properties noted were: 3801 E 4th St., valued at $850,218; 220 Cook St., valued at $900,000; and 245 Madison St., valued at $968,000.

The Respondent presented Kimberly A. Lust, an appraiser with the Denver Assessor's Office, as an expert witness. Ms. Lust testified to an appraisal of the subject property identified as a Restricted Appraisal Report, admitted by the Board as Exhibit A. Ms. Lust testified that the Cherry Creek neighborhood is an affluent, desirable neighborhood undergoing significant redevelopment, specifically in property zoned G-RH-3 (like the subject). She testified that the supply of vacant land in the neighborhood is sparse, and that a buyer desiring to build new improvements would be likely to buy a site with an existing structure and demolish it. Ms. Lust testified that houses like the one on the subject property are being scraped, and the land redeveloped with new residential improvements. The Appraiser determined that the use of the property for classification purposes was residential, and that the highest and best use of the property was as land with an interim use of the existing improvement intended for demolition and redevelopment, to fully utilize the G-RH-3-zoned site. To support this highest and best use determination, the appraiser identified 70 sales since 2015 of improved properties whose improvements have been demolished in favor of new improvements. In the Restricted Appraisal Report, Ms. Lust identified 5 sales of property which were improved with residences at the time of purchase, which residences were demolished soon after sale. Three of the sales had the same lot size as the subject. All of the sales were located within 5 blocks of the subject. The sale prices were adjusted for time, size of site, and location. Sale prices after time adjustment ranged from $750,400 to $1,391,133. The value per square foot of land was used as the determinative comparative value indication of the subject. The time adjusted sale prices divided by the land

size of the comparables ranged from $128.51 to $222.61, an average sale price per square foot site of $172.61. After adjustments, the value per square foot of land size ranged from $134.93 to $211.45, with an average adjusted sale price per square foot of $174.14. The appraiser reconciled to a value of $170 per square for the subject land and then added $1,000 to represent the contributory value for the residential improvement. Ms. Lust testified that the improvements on her chosen comparables were "not pertinent," given that the land value is the highest and best use of the subject. The value for the subject property determined by Respondent is $1,063,500.

The Board does not agree with Petitioner's critique of Ms. Lust's highest and best use analysis. The Division of Property Taxation provides binding guidance for county assessors in the Assessors' Reference Library, which states as follows:

> Valuation for ad valorem property taxation should be based on a property's highest and best use. The requirement of valuing property at its highest and best use was affirmed by the Colorado Supreme Court in Board of Assessment Appeals, et al, v. Colorado Arlberg Club, 762 P.2d 146 (Colo. 1988). In that case the court concluded that "reasonable future use is relevant to a property's current market value for tax assessment purposes." The court further noted "our statute does not preclude consideration of future uses" and it quoted the American Institute of Real Estate Appraisers, referencing The Appraisal of Real Estate 33, 1983, 8th Edition, "In the market, the current value of a property is...based on what market participants perceive to be the future benefits of acquisition." Reasonable future use is based on the actions and expectations of the market, and is consistent with the highest and best use concept that requires use to be physically possible, legally permissible, financially feasible, and maximally productive.

3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 2, at 2.3 – 2.4, (rev. Jan. 2021.)

A property's highest and best use is relevant to "the Board's determination of the price on which a willing buyer and a willing seller would agree for the property in its present condition" and is a "crucial determinant" of market value. *Bd. of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146, 152 and 154. (Colo. 1988). The current or intended use of a property is not always the same as its reasonable future use or its highest and best use. Even if Petitioner intended not to redevelop the subject, the proper way to appraise the subject for taxation purposes is in light of its highest and best use. The Board concurs with Ms. Lust's determination of the highest and best use of the subject property in its present condition. Ms. Lust provided adequate market evidence to support her conclusion that the existing use is not financially feasible, and that maximum return to the land would be realized through demolition and redevelopment via improvement with an "urban house, duplex, tandem house, [or] row house building." Ms. Lust proved through her analysis, as stated in her report, that "the value of the subject property as currently improved does not exceed the value of the underlying land, and the existing use of the land is not financially feasible." The *Arlberg* decision cautioned against valuation based on speculative use, to the extent that valuation based on anticipated development might ignore unknown costs of development. The Board finds that not to be a concern in this

case, where Ms. Lust provided market data consisting of sales of improved properties like the subject, which were redeveloped following purchase. Ms. Lust testified that purchasers factor the costs of redevelopment into their purchase price, because they buy the properties with the intent to redevelop. The Board agrees that the change in use is not speculative, because there is sufficient market activity in the subject neighborhood to prove that properties like the subject are purchased for their land value.

The Board rejects Petitioner's argument that comparables sold beyond the 2-year data collection period must be excluded. Ms. Lust explained her selection of comparable 1 as a bracketing comparable, and her use of it is statutorily permitted as necessary to obtain adequate comparable valuation data. *See* § 39-1-104, C.R.S. ("[I]f comparable valuation data is not available from such one-and-one-half-year period to adequately determine such actual value for a class of property, "level of value" means the actual value of taxable real property as ascertained by said applicable factors for such one-and-one-half-year period, the six-month period immediately preceding such one-and-one-half-year period, and as many preceding six-month periods within the five-year period immediately prior to July 1 immediately preceding the assessment date as are necessary to obtain adequate comparable valuation data.")

The Board likewise rejects Petitioner's argument that comparables that are not exact in every way should be excluded. Differences in comparable sales' date of sale and characteristics do not disqualify them from consideration. The standard appraisal practice is to identify the most similar and timely comparable properties available and then to adjust for differences. The Respondent has properly applied appraisal principles to the adjustments of the comparables sale prices, including making adjustments for lot size.

The Board was not able to assess the degree of comparability to the subject of the two sales Petitioner provided, because Petitioner did not provide the Board with sufficient information. Based on the limited information provided, the Board was not persuaded that their sale prices indicate a lower value is warranted for the subject.

Finally, the Board was not provided with any evidence regarding the "similarly situated" properties which Petitioner stated were assigned lower land values than the subject. Petitioner stated information regarding these properties was contained in emails, but these emails were not provided to the Board.

The Board can only consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). Once the actual value of the subject property has been determined, the Board can consider an equalization argument if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were derived by application of the market approach and that each comparable was correctly valued. *See* § 39-8-108(5)(b), C.R.S ("The assessor's valuation of similar property similarly situated shall be credible evidence.") However, there was no evidence or testimony presented which shows the Board that the assigned value of the equalization comparables was derived by application of the appropriate approaches to value and that the comparables were correctly valued. In addition, equalization evidence, by itself, does not satisfy

the requirement to provide comparable sales with appropriate adjustment. As a result, the Board gives no weight to the Petitioner's equalization argument.

The Board finds that there was not sufficient data or evidence offered by Petitioner to show that the valuation of the subject is incorrect. The Board finds that Petitioner did not meet his burden of showing that the value assigned by the County Board of Equalization was incorrect. The Board finds that Respondent's comparable selection, including adjustments, was reasonable and well supported. The Board finds Respondent's recommended value credible, grants Respondent's request to reduce the value of the subject property for tax year 2019, and grants the petition on that basis alone.

ORDER

The Petition is **GRANTED**. The Denver County Assessor is ordered to change the value of the subject property to $1,063,500.

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).

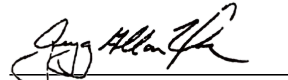
DATED and MAILED this 16th day of March, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

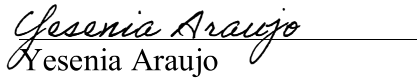
Samuel M. Forsyth

Concurring Board Member:



Gregg Near
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