

Petitioner's Requested Value: \$ 87,400

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.

The cost approach involves estimating the cost of replacing the improvements to the property, less accrued depreciation. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo. 1990). Colorado law mandates that depreciation in the valuation of a taxpayer's personal business property be allowed annually from the base year to the date of assessment. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

The income approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Sonnenberg*, 797

P.2d at 31. It generally involves calculating the income stream (rent) the property is capable of generating, capitalized to value at a rate typical within the relevant market. *Id.*

FINDINGS AND CONCLUSIONS

The Petitioner purchased the subject vacant land parcel by Quit Claim Deed on June 14th, 2016 “for and in consideration of the sum of \$82,306.” (Quit Claim deed recorded 7/14/2016 City and County of Denver, recording number 2016091322 (Exhibit 5)). The subject property is partly paved and striped for parking to accommodate parking for the adjacent shopping center. Petitioner objects to the value determined by the Denver County Board of Equalization and the excessive increase in value from the previous data collection period. Petitioner pleads that the Respondent has provided no market evidence to justify the value of the subject property. Petitioner disagrees with valuing the subject property in conjunction with the valuation of the adjacent improved property as Petitioner believes that subject is a distinct property with its own highest and best use and should be valued independently. Petitioner offered Andrew Williamson as a witness. Mr. Williamson is an employee of the owner’s management company. Mr. Williamson testified as to the history of the subject property, the valuation history of the subject, the license agreement executed in 2013 before the property was purchased outright to accommodate parking for the adjacent improvement property, the background behind the paving of part of the subject property, and other management duties regarding the subject property. Mr. Williamson is not an appraiser. Petitioner offered no market data nor appraisal analysis to support an opinion of value.

The Respondent offered as an expert witness Josh Bushner. Mr. Bushner holds a Colorado Ad Valorem Real Appraisal License. Mr. Bushner is a Property Appraiser Supervisor in the Commercial Division of the Denver Assessor’s Office. Mr. Bushner presented a Property Summary and Methodology Information Packet (Exhibit A). The “packet” provided definitions and discussion of the terms *Economic Unit* and *Tie-Back Parcel* and procedures as to how the Denver County Assessor values properties that fall under these definitions, including the subject property. The report defined the subject parcel as a “tie-back parcel” and the adjacent improved parcel as a “parent parcel,” and defines the subject parcel and adjacent improved parcels taken together as an “economic unit.” The report proceeded to explain that the subject parcel has no independent discrete market value, but that the value of the subject is tied to and can only be determined by valuing the subject as part of the value of the adjacent parcel. The report then defined how the value of the subject was extracted from the overall value of the economic unit. Subsequent to providing evidence of the value of the “economic unit” (consisting of the two parcels together) and after the determination that the subject parcel is a “tie-back parcel,” necessary for the improved adjacent parcel “to function to its highest and best use,” Respondent then determined an extracted value of the subject site.

The Board notes that neither party presented documentary evidence or testimony as to the market value of the subject parcel as determined by a site-specific appraisal. Neither did either party provide evidence as to whether the subject property had any market value aside from the use of the subject as parking for the adjacent improved property. Denver County instead explained to this Board the Assessor’s long-standing practice of applying the presented methodology in valuing parcels such as the subject. Denver County did not determine the highest and best use of the subject

property. Nor did Respondent provide any testimony or exhibits as to the market value of the subject property. Mr. Bushner specifically testified:

- “[T]here were issues with it [the subject property] as a stand-alone parcel if you had to market it or try to sell it on its own.” (Hearing Recording, 58:42).
- “I also didn’t do a full appraisal on the land so I didn’t look at all the sales that were available in Green Valley Ranch that would have been comparable.” (Hearing Recording, 58:56).
- “I did not research any sales for this hearing today because I do not believe this is a valuation issue.” (Hearing Recording, 59:41).
- “[T]his is not an appraisal. This is explanation of methodology on how we [value tie-back properties as part of an economic unit].” (Hearing Recording, 59:59).
- “I did not do an appraisal on this piece of land. I did not do research to support or contradict the value.” (Hearing Recording, 1:00:50).
- “I don’t know if [the subject’s value] could be developed separately or not.” (Hearing Recording, 1:01:30).

Respondent also testified he is not aware of the term “tie-back” in the Assessor’s Reference Library, or being used by the Appraisal Institute, and that he believes it to be a term unique to mass appraisal.

The Board finds that the Denver County Assessor’s valuation is incorrect. The Board was convinced by the evidence and argument presented that the methodology used by the Assessor to value the subject is not accepted appraisal practice and is not likely to have resulted in a supportable value for the subject.

However, the Board cannot determine the taxable market value of the subject property from the record. Neither party presented sufficient evidence for the Board to arrive at a value. Respondent’s explanation that its methodology is a longstanding practice of the Assessor’s Office cannot suffice, as the Board’s determinations are required to have a reasonable basis in the law. *Home Depot USA, Inc. v. Pueblo County Bd. of Com’rs*, 50 P.3d 916, 920 (Colo. App. 2002). Accordingly, the Board remands this matter to Denver County for a new assessment. *See Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (2005) (“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.”)

In preparing the new assessment, Denver County shall consider the cost, market, and income approaches. *See* Colo. Const. art. X, § 3(1)(a); §§ 39-1-103(5)(a), (14)(b), (15); A.R.L. Vol. 3, Ch. 4. Denver County shall also determine whether the sale of the subject property, as identified on the Quit Claim Deed recorded with the City and County Denver on July 14, 2014, with reception number 2016093122 (Exhibit 5), evidences a sale that conforms to the definition of market value as established in Assessor’s Reference Library, Volume III, Chapter 3, page 3.13:

- a. Buyer and seller are typically motivated;
- b. Both parties are well informed or well advised and act in what they consider their best interests;

- c. A reasonable time is allowed for exposure in the open market;
- d. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- e. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Denver County shall also determine the highest and best use of the subject property. *See Bd. of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146, 152 (Colo. 1988) (holding that a property's highest and best use is a "crucial determinant" of market value.) The determination of the subject's highest and best use will indicate the highest and best use of the subject property and determine whether the subject property is a buildable site as it stood on the level of value or whether its **only** value to the market is for the operation of the adjacent improved parcel identified in Denver County Records as parcel 00222-00-025-000, property address 4650 Tower Road, owned by Green Valley Ranch Shoppette, LLC. Upon determination of the highest and best use of the subject, the Denver County Board of Equalization shall provide a site-specific appraisal of the subject property as it stands as an individual building site, or the improved property in addition to the subject property. In either instance, the site-specific appraisal should include a discussion on the concepts of surplus land or excess land of the subject parcel.

Respondent shall provide the new assessment to Petitioner and the Board of Assessment Appeals by no later than **March 1, 2021**. Petitioner shall file a notice with the Board of Assessment Appeals by no later than **March 31, 2021** if Petitioner disagrees with the value determined in the new assessment. Upon receipt of such notice, the Board of Assessment Appeals will set this matter for hearing.

ORDER

The petition is **REMANDED** to the Denver County Board of Equalization.

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).

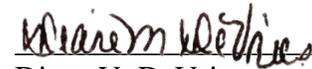
DATED and MAILED this 15th day of January, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


Samuel M. Forsyth

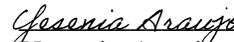
Concurring Board Member:


Diane V. 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