BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **SECRETARIAT INVESTMENTS,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: Mark W. Gerganoff, Esq. Frank & Finger, P.C. Address: 29025-D Upper Bear Creek Road Evergreen, Colorado 80437-1477 Phone Number: (303) 674-6955 Attorney Reg. No.: 13240	**Docket Number: 42079**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on January 18, 2005, Sondra W. Mercier and Rebecca Hawkins presiding. Petitioner was represented by Mark Gerganoff, Esq. Respondent was represented by Michelle Gombas, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

7280 – 7298 Lagae Road, Castle Pines, Colorado
(Douglas County Schedule Nos. R0437135, R0437138 and R0437139)

The subject property consists of a 23,066 gross square foot retail shopping center located on 4.198 acres, and two vacant pad sites of 1.1234 acres and 1.465 acres respectively.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax year 2003. The retail shopping center was 100 percent vacant during the base period and 11,403 square feet of the retail space was unfinished. The pad sites are undeveloped and have limited exposure. Respondent's sales approach and income approach contain errors and are not credible.

Respondent:

Respondent contends that the subject property was properly valued. The retail center must be valued based on its level of completion as of January 1, 2003, which Respondent estimated to be 80 percent. Respondent contends that Petitioner undervalued the retail center site and incorrectly applied present worth discounting to the pad sites.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, a Registered Appraiser with Stevens and Associates, presented the following indicators of value for the combined retail center and vacant pad sites:

Market:	$2,922,299.00
Cost:	$2,432,481.00
Income:	$2,077,096.00

2. Mr. Stevens testified that Lot 2 is a retail strip center anchored by King Soopers. It has 23,066 gross square feet, 23,003 square feet of net rentable area and 11,403 square feet of vacant, unfinished space. The property was vacant as of June 30, 2002. Lots 3 and 5 are undeveloped pad sites that have limited access and restricted exposure due to the retail center. Although Lot 5 is larger, it is located behind a retention pond, further limiting direct visibility from Castle Pines Parkway. He testified that Lot 5 is inferior to Lot 3, which makes it difficult to market Lot 5.

3. Mr. Stevens presented three vacant land sales to value Lots 3 and 5. The comparable land sales ranged in sales price from $11.43 to $20.61 per square foot. Mr. Stevens applied a significant negative adjustment to all of the sales due to superior locations. After adjustments, the sales indicated a value range of $7.98 to $8.57 per square foot for Lot 3, and a value range of $6.18 to $6.86 per square foot for Lot 5. Mr. Stevens testified that he reconciled to $8.00 per square foot for Lot 3 and $6.50 per square foot for Lot 5. The resulting base value of Lot 3 was $391,344.00 and the resulting base value of Lot 5 was $414,798.00. Mr. Stevens applied a 13 percent present worth discount rate to both sites, and a five-year absorption period for Lot 3 and a ten-year absorption

period for Lot 5. He concluded to a value of $275,289.00 for Lot 3 and a value of $225,079.00 for Lot 5.

4. Petitioner's witness presented three retail center comparable sales ranging in sales price from $198.91 to $254.82 per square foot. Mr. Stevens testified that, as of June 30, 2002, no vacant retail centers had sold and he was only able to find fully occupied sales. Mr. Stevens adjusted the comparables based on the assumption that the subject was 100 percent vacant and approximately 50 percent finished at the end of the base period. All three comparable sales were reported to have superior locations. After adjustments, the sales ranged from $101.70 to $115.37 per square foot. Mr. Stevens concluded to a value of $105.00 per square foot for the retail center or $2,421,930.00, plus the land value for Lots 3 and 5, to arrive at an indicated total value of $2,922,299.00 based on the market approach.

5. In the cost approach, Mr. Stevens testified that he valued the retail center site (Lot 2) at $2.78 per square foot, which he indicated was the original purchase price. The site was purchased during the January 1, 2001 through June 30, 2002 base period in an arm's-length transaction. He classified the improvement as a Class C, average quality building. The effective age of the building is one year and he applied a one percent adjustment for physical depreciation. Petitioner's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the retail center of $1,264,656.00. The total property value based on the cost approach was calculated as follows:

Depreciated building cost	$1,264,656.00
Parking lot	158,785.00
Land value/Lot 2	508,365.00
Pad site value/Lots 3 and 5	500,675.00
Total Cost Approach Value	$2,432,481.00

6. Petitioner's witness presented an income approach to derive a total value of $2,077,096.00 for the subject property. Mr. Stevens testified that the shopping center had seven leases in place; however, they did not take effect until after the base period. Base lease rates on the subject property ranged from $24.50 to $25.00 per square foot, with effective rents ranging from $19.49 to $21.31 per square foot. He reconciled to $21.00 per square foot net of expenses for the subject property.

7. Mr. Stevens testified that his survey of CAM charges indicated a range from $9.37 to $10.25 per square foot. He used $10.00 per square foot for the subject property. He applied a vacancy rate of 30 percent, management fee at 5 percent and operating expenses at 15 percent. The capitalization rate was derived from the Comparable Sales and the Summer 2002 Integra Survey. For the capitalization rate, he used 10 percent plus 3.6 percent for property taxes for a total of 13.86 percent.

8. Under cross-examination, Mr. Stevens testified that the owners did not apply for the Certificate of Occupancy until they had the first tenant. The owners did not want to incur additional costs to finish the space without a tenant. Based on the rent roll, Mr. Stevens determined that 50

percent of the space (eight units) were completed and rented as of January 1, 2003. Petitioner's level of completion/occupancy contradicts the information contained in Respondent's appraisal report, and the Douglas County Building Department showed an even lower amount. Regarding the land cost of $2.78 per square foot used in the cost approach, Mr. Stevens testified that the cost reflected the raw land with no infrastructure, and that it is appropriate to use the cost of the raw land. The improvement is new construction; however, he believed a 1 percent deduction for physical depreciation was appropriate in the cost approach.

9. Petitioner is requesting a 2003 actual value of $2,200,000.00 for the subject property including the retail center and two pad sites.

10. Respondent's witness, Mr. Mike Shafer, a Certified Residential Appraiser with the Douglas County Assessor's Office, presented the following values for the retail center:

Market:	$4,728,530.00
Cost:	$3,092,418.00 at 80% completion as of 1/1/03
Income:	$5,146,021.00

11. Mr. Shafer presented seven sales for comparison with the retail center. Respondent's retail comparables ranged in sales price from $196.10 to $254.82 per square foot. No adjustments were made to the comparables. All of the sales are similar to the subject in age and are neighborhood shopping centers. Comparable Sales 5 and 6 sold prior to the 18-month base period but were included for additional support. Comparable Sale 7 sold after the base period; however, contract negotiations were underway prior to June 30, 2002. Comparable Sales 1, 6, and 7 are closest to the subject in location. Mr. Shafer testified that he reconciled to the lower end of the range, at $205.00 per square foot for the subject property. Based on the market approach, Respondent's witness presented an indicated value of $4,728,530.00 for the retail center.

12. In support of the cost approach, Mr. Shafer presented seven comparable land sales used to determine the value of the retail center site. The land comparables ranged in price from $10.08 to $20.60 per square foot after adjustments for time. Five of Respondent's comparable land sales are located within one block of the subject retail property. Comparable Sale 6 was raw land prior to development, with an adjusted value $10.08 per square foot. He reconciled to $10.00 per square foot for a final land value for the retail site of $1,828,780.00.

13. Mr. Shafer disagreed with Petitioner's use of the original purchase price of the subject land ($2.78 per square foot) as a current indicator of value. He testified that, at the time of purchase, the subject was part of a 17.8109-acre site that was purchased from a rancher, had agricultural use and a metes and bounds legal description, and had no improvements, grading or utilities. Mr. Shafer testified that as of January 1, 2003, the subject site was platted and graded, and had an asphalt parking lot and a building that was 80 percent complete.

14. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the retail center of $1,579,547.00. Since the improvement was new construction, Respondent made no deduction for physical depreciation. As the center was only 80

percent complete as of January 1, 2003, Mr. Shafer reduced the cost of the retail center by 20 percent, resulting in an improvement value of $1,263,638.00. The total value indicated by the cost approach for the retail improvement and land was $3,092,418.00.

15. Respondent's witness used the income approach to derive a value of $5,146,021.00 for the retail center. Mr. Shafer testified that rental rates for shopping centers similar to the subject range from $20.00 to $25.00 per square foot. Respondent's comparables were built between 1999 and 2000, had vacancy rates ranging from 0 to 10 percent, and all had net leases similar to the subject. He reconciled to a net rental rate of $23.00 per square foot for the retail space. Leases for the subject retail space were in place as of September 2002 at $25.00 per square foot. Mr. Schafer applied a 3 percent adjustment for the subject's vacancy rate and a 5 percent deduction for operating expenses. He testified that capitalization rates for the sales shown in Respondent's market approach ranged from 8.5 to 10 percent. The 2001- 2002 Integra Real Estate Investment Survey indicated that capitalization rates for neighborhood shopping centers in the Denver area ranged from 9 to 10 percent. Mr. Shafer concluded to a 9.5 percent capitalization rate due to the age and above average location of the subject. In cross-examination, Mr. Shafer testified that he used information supplied by the owner in the income approach, although he did not review any of the subject's leases. By using a rental rate of $23.00 per square foot versus the actual rate of $25.00 per square foot, Mr. Shafer testified that he gave the benefit of the doubt to the taxpayer. The amount of tenant finish was not considered when he determined the rate of $23.00 per square foot. Mr. Shafer believes that the subject's level of occupancy as of January 1, 2003 is not relevant since he gave most weight to the cost approach.

16. Mr. Shafer concluded to a final value of $5,000,000.00 for the retail center, which supports the assigned value of $2,960,154.00 for the retail center.

17. Mr. Shafer presented six vacant land sales for comparison with Lots 3 and 5 of the subject property. After time adjustments, Respondent's comparables ranged in value from $11.54 to $24.86 per square foot. He indicated that four of the comparable sales are located within a block of the subject. Mr. Shafer concluded to a value of $14.70 per square foot for both pad sites. Mr. Shafer testified that present worth was applied to Lots 3 and 5 in error. Two of the five sites located within the subject subdivision sold over a period of seven months; thus the remaining absorption period for the 3 remaining lots is less than one year. Pursuant to the Assessor's Reference Library (ARL), the absorption period must be greater than one year to qualify for present worth discounting. Based on the market approach, the resulting values for Lots 3 and 5 are as follows:

Lot 5	$938,150.00
Lot 3	$719,349.00

18. Mr. Shafer testified that the appraised value supports the assigned value of $13.00 per square foot or $829,657.00 for Lot 5 and $636,159.00 for Lot 3.

19. Upon questions from the Board, Mr. Shafer testified that he did not account for the subject's vacancy rate in the income approach, as potential investors would look at the property as if it were 100% occupied.

20. In rebuttal, Mr. Stevens testified that the absorption (sellout) period for Lots 3 and 5 was based on sufficient history. In the case of the subject development, if the entire base period is used then the calculation changes. The entire area of Charter Oaks should be used, not just the amendment to the master plan. A reasonable length of time on the open market must be considered, which is why he applied present worth.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the retail center (Schedule No. R0437139) was correctly valued for tax year 2003. Petitioner presented sufficient evidence and testimony to prove that Lot 3 (Schedule No. R0437138) and Lot 5 (Schedule No. R0437135) were overvalued for tax year 2003.

2. While all three approaches to value should be considered in the case of the retail center, the Board finds that the cost approach provides the best indicator of value, given the recent completion of the improvement, level of completion and leasing status as of January 1, 2003.

3. The Board was not persuaded that the original purchase price of the raw land at $2.78 per square foot is appropriate to value the retail center site. Based on the level of development of the retail center site as of January 1, 2003, Respondent's comparable land sales substantiate a retail site value of $10.00 per square foot.

4. The Board was not convinced that the improvement should be adjusted for physical depreciation as the retail center was under construction in 2003. The Board determined that the $1,263,638.00 improvement value derived from Respondent's cost approach more accurately reflects the replacement cost new of the improvements at 80 percent completion. Although the subject was not 80 percent occupied as of January 1, 2003, the Respondent presented significant evidence of tenant finish improvements (Building Permits and Certificates of Occupancy) to support the subject's level of completion. The total appraised value indicated by Respondent's cost approach for the retail center ($3,092,418.00) substantiates the assigned value of $2,960,154.00 for tax year 2003.

5. As a test of reasonableness, the Board reviewed the retail comparable sales presented by both parties. Petitioner's unadjusted sales ranged in price from $198.91 to $254.82 per square foot. After significant downward adjustments ranging from 42 to 58 percent, the Petitioner concluded to a value of $105.00 per square foot based on the assumption that the subject was 100 percent vacant and approximately 50 percent finished at the end of the base period. As the subject was closer to 80 percent finished as of January 1, 2003, the Board finds Petitioner's assumption of 100 percent vacancy to be unreasonable. Respondent's comparable retail sales ranged in price from $196.10 to $254.82 per square foot, with no adjustments. Mr. Shafer concluded to a value of $205.00 per square foot for the subject. The Board finds that the comparable sales support the value contained in Respondent's cost approach for the retail center, considering that it was 80 percent complete.

6. The Board found errors in portions of both Petitioner's and Respondent's income approaches for the retail center. While the Respondent overstated the potential rental rate for the subject and failed to deduct remaining leasing and tenant finish costs, the Petitioner overstated the vacancy based on the status of the subject at the time of value, then further deducted the remaining leasing and tenant finish costs. Petitioner convinced the Board that a rental rate of $21.00 per square foot was appropriate for the subject given the effective rates of the seven leases that were signed during the base period. Petitioner's 30 percent vacancy rate for the subject does not accurately reflect market vacancy rates. Respondent's comparable properties support a market vacancy rate of 3 percent. Both Petitioner and Respondent based their analysis of expenses on a net lease basis; however, Petitioner's total expense deduction represents over 48 percent of gross income without taxes. The Board finds Petitioner's deduction of $25.00 per square foot to complete the unfinished space to be reasonable. Due to the significant differences between the parties' income approaches, the Board placed little weight on the income approach to value the retail center.

7. Regarding the value of Lots 3 and 5, Petitioner's witness did not present adequate evidence to support significant (25 to 70 percent) negative location adjustments. In addition, the Respondent convinced the Board that, given the absorption of lots located in the subject development, present worth discounting of Lots 3 and 5 is not appropriate. Although Respondent presented four proximate land sales, the Board was convinced by Petitioner's testimony regarding access and exposure that both pad sites should be valued at the lower end of the range. The Board determined that Lot 3 should be valued at $12.00 per square foot. Recognizing the negative influence of the detention pond, the Board determined that Lot 5 should be valued at $10.00 per square foot.

8. After careful consideration of all the evidence and testimony presented, the Board affirms Respondent's assigned value for Schedule No. R0437139 and concludes that the values for Lots 3 and 5 should be reduced as follows:

Lot 3 – Schedule No. R0437138	$586,016.00
Lot 5 – Schedule No. R0437135	$638,150.00

ORDER:

The Respondent is ordered to reduce the 2003 actual value for Schedule No. R0437138 (Lot 3) to $586,016.00 and to reduce the 2003 actual value for Schedule No. R0437135 (Lot 5) to $638,150.00. The Douglas County Assessor is directed to change his/her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 19th day of April 2005.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca A. Hawkins

Sondra W. M

Sondra W. Mercier

This decision was put on the record

APR 19 2005

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

Penny S. Lowenthal

Penny S. Lowenthal

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