

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>DIKEOU REALTY, P.J. TRUST LLC &amp; JOHN P. DIKEOU (AMENDED)</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket Nos.: 50643 50644 &amp; 50645</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on July 14 and 15, 2010, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Kenneth S. Kramer, Esq. Respondent was represented by David V. Cooke, Esq. Petitioner is protesting the 2008 actual value of the subject property.

The Board consolidated Docket Nos. 50643, 50644 and 50645.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**Portion of a triangular parcel formed at the intersection of Broadway, Welton and 20<sup>th</sup> Streets, Denver, Colorado (Denver County Schedule No. 02345-01-016-000, 02345-01-001-000, 02345-01-015-000 and 02345-01-017-000)**

The subject includes four parcels located within the triangle formed at the intersection of Broadway, Welton and 20<sup>th</sup> Streets. The Board was convinced that the parcels were operated as a single unit and should be valued as a single unit for a total of 21,557 square feet. Site improvements were given a value of \$1,000.00 for each of the properties, which was not contested by either party.

As of the date of value, 19,148 square feet or three of the parcels were leased to Budget Rent A Car Systems, Inc. The site was improved with paved parking and included a three-story office building constructed in 1923 that both parties agreed had reached the end of its economic life. The remaining 2,409 square foot parcel was leased to Viacom Outdoor, Inc. for use as a billboard location. Two of the four subject lots were purchased by PJ Trust, LLC in November 2005 for \$300,000.00 equal to \$37.19 per square foot.

Petitioner's witness, Mr. Steve Letman, presented an income approach to derive a value of \$646,000.00 for the total property. Mr. Letman calculated gross income of \$78,000.00 based on the rent being paid by Budget as of the date of value. Expenses for insurance, permits, management fees and replacement reserves totaling \$13,385.00 were deducted, indicating net operating income of \$64,615.00. Mr. Letman capitalized the income at an overall rate of 10% for an indicated value of \$646,000.00, rounded. Mr. Letman gave no consideration to the income or expenses associated with the billboard lease. Petitioner's witness, Neil Goldblatt, testified that the expenses associated with the billboard site were higher than the income generated by the lease.

Petitioner's witness testified that the value indicated by the Assessor is the "retail" value of the property that should be discounted to reflect an extended holding period before the property would sell for development. Using a discount rate of 12% and an extended holding period of 5 years, Petitioner's witness determined the present worth of the land to be \$760,000.00, rounded.

Petitioner is requesting a 2008 actual value of \$675,000.00 for the four properties.

Based on the market approach, Respondent presented an indicated value of \$2,131,400.00 for the four properties.

Respondent's witness, Mr. Walter A. Sorrentino, presented four comparable sales ranging in sales price from \$81.81 to \$139.88 per square foot and in size from 21,875 to 62,960 square feet. Respondent's analysis included the sale of a site directly across the street from the subject. Mr. Sorrentino testified that he did not consider the actual sale of a portion of the subject in his analysis as he believed there was a relationship between the parties prior to the transaction; therefore, it was not given consideration in his market approach.

Respondent compared each sale to the 19,148 square foot portion of the subject leased to Budget Rent A Car Systems, Inc. After adjustments were made, the sales ranged from \$96.33 to \$129.04 per square foot. Respondent concluded to a per square foot value of \$101.25 for that portion of the subject. Secondly, Respondent compared the same comparable sales to the smaller 2,409 square foot portion of the subject that is leased to Viacom Outdoor, Inc. Mr. Sorrentino applied an additional 25% adjustment to each sale to reflect the irregular shape and small size of the triangular corner, resulting in a range of \$79.97 to \$101.06 for that portion of the subject. Mr. Sorrentino concluded to a value of \$80.00 per square foot for the 2,409 square foot portion of the subject.

Respondent assigned an actual value of \$1,343,000.00 to the four properties for tax year 2008.

Petitioner contends that Respondent incorrectly valued the subject at its highest and best use assuming eminent development to a speculative use. Several witnesses for Petitioner testified that there was no demand for the redevelopment of the subject as of the date of value and that Respondent had relied on sales that had superior locations and development potential at the time of sale. Although no independent market approach was provided, Petitioner contends that the transfer of two of the four subject parcels during the base year was an arms-length transaction that should be given consideration in the valuation of the subject. Several witnesses also testified that Respondent's Sale 1 should not be considered as the overall project developed on the site since purchase was ill-conceived and did not represent highest and best use.

Respondent contends that the development of the site adjacent to the subject indicates market demand and that the highest and best use of the subject is redevelopment. Respondent contends that the current use of the subject is an interim use, not the highest and best use of the subject. Consequently, the current lease to Budget is considered interim and understates market value. Mr. Sorrentino testified that the subject does not qualify for discounting based on DPT guidelines. Respondent contends that the actual sale of two of the subject lots during the base period is not a qualified sale that can be given consideration in the valuation of the subject.

The Board was convinced that Respondent's assertion that the subject should be valued as a redevelopment site was speculative and not supported by market data. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P 2d 146 (Colo. 1988), the court allowed properties to be valued under their highest and best use if evidence was presented that the use was a reasonable future use. The Court held that, "Speculative future uses cannot be considered in determining present market value." While Respondent showed that alternative residential or commercial uses would be legally permissible and physically possible, no support was provided that an alternative use would be financially feasible, or maximally productive to provide a higher return than the current use.

The Board was not convinced that the subject qualifies for discounting as vacant land. "Vacant land" means any lot, parcel, site, or tract, upon which no buildings or fixtures, other than minor structures, are located, Section 39-1-103(14)I(I), C.R.S. "Minor structures" means improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose, Section 39-1-103(14)I(II)(A), C.R.S. Under Section 39-1-103(14)(c)(I), C.R.S., all vacant land is eligible for present worth discounting. The subject is currently improved, leased and used as a parking facility with an office building.

The Board finds that while use of the income approach would be appropriate for the subject, Petitioner provided no support to show that the current lease agreement including the rental income and expenses were representative of the market. Also, Petitioner did not include the income and expenses for the billboard.

While Respondent presented comparable sales that should be given consideration, the Board found Respondent's adjustments to be unsupported by market data. This was particularly true regarding Respondent's time adjustment. The Board was convinced that consideration should be given to the actual sale of a portion of the subject as it was not a transaction between related parties

and should be considered as an arms-length sale; however, adjustment is required. The sale of the subject included a small portion of the site. It would not be desirable as a stand-alone site, requiring upward adjustment compared to the assemblage of the subject as a whole.

Both parties agreed that the current improvements added little value to the subject; consequently, the Board relies on land sales as the best indication of value provided for consideration. The Board was convinced that Respondent's Comparable Sales 1 and 6 are appropriately included in the market analysis. Both sales are of sites proximate to the subject. Comparable Sale 1 was irregular in shape, similar to the subject. Sale 6 is located two blocks southwest of the subject and is developed as a parking lot. After eliminating the unsupported time adjustment, these sales indicate adjusted values of \$85.90 and \$89.37 per square foot. Averaging these two sales with the actual sale of a portion of the subject provides an indication of value that is higher than the 2008 actual value of \$62.30 per square foot of land area assigned by Respondent.

Petitioner presented sufficient probative evidence and testimony to prove that valuing the subject at Respondent's highest and best use determination was speculative and therefore, incorrect. However, no corresponding change in value is indicated by the sales relied upon by the Board. The Board finds the 2008 actual value of \$665,000.00 for Schedule No. 02345-01-016-000, \$306,500.00 for Schedule No. 02345-01-015-000, \$219,900.00 for Schedule No. 02345-01-017-000 and \$151,600.00 for Schedule No. 02345-01-001-000 for a total actual value of \$1,343,000.00 to be correct.

### **ORDER:**

The petition is denied.

### **APPEAL:**

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-five 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-five 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

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Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 21<sup>st</sup> day of October 2010.

**BOARD OF ASSESSMENT APPEALS**

*Karen E Hart*

Karen E. Hart

*Sondra W Mercier*

Sondra W. Mercier

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

*Amy Bruins*

Amy Bruins

