

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DEV-VIC LTD LIABILITY CO,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 54062, 54064 & 56153</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on multiple dates: arguments relating to classification and affecting Dockets 54064 (tax year 2009) and 56153 (tax year 2010) were heard on June 23, 2011; arguments relating to valuation and affecting Dockets 54062, 54064 and 56153 (tax years 2009 and 2010) were heard on April 2, 3 and 12, 2012. Gregg Near and MaryKay Kelley presided. Petitioner was represented by Jeffrey J. Schroeder, Esq. Respondent was represented by Robert D. Clark, Esq.

Dockets 54062, 54064 and 56153 have been consolidated for purposes of the hearing.

Subject property is described as follows:

Douglas County Schedule No. R0472310-12 (Docket 54062)

Douglas County Schedule Nos. 0402725-27, 0435308, 0469423, 0469461, 0469465-66, 0469482-83 and 0472316 (Dockets 54064 and 56153)

Classification (Docket Nos. 54064 and 56153)

“Agricultural land” is defined as “a parcel of land . . . that was used the previous two years and presently is used as a farm or ranch” Section 39-1-102(1.6)(a)(I), C.R.S.

A “ranch” is defined as a “parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit.” Section 39-1-102(13.5), C.R.S.

Two parcels of vacant land are discussed herein, the “Lowe’s Parcel” and the “Northern Parcel”. The two are separated physically by fencing.

Lowes Parcel (31.124 acres; Schedule Nos. 0402726, 0435308, 0469482-83, and 0472316)

This parcel is bordered by Lowes on the southeast, by U.S. Hwy 85 on the west, by the Castle Rock Outlets on the east, and by the Atrium Drive roundabout on the north. Terrain is level, and only one tree is available for shade.

Petitioner’s witness, Walter Booth, owner of Trail’s End Livestock LLC, presented grazing leases for the subject parcel from 2006 through 2010 and photos of grazing cattle dated 2009 and 2010. Annually in February or early March, Mr. Booth assesses forage, the availability of water, and fencing, which is repaired before introducing cattle in late April or later, depending on weather. This parcel services few cattle due to minimal shade and summer heat, and cattle graze only three to six weeks per year. One water tank is filled every two to three days when necessary. Mr. Booth offered photographs of grazing cattle in 2009 but not in prior years.

Respondent’s witness, Virginia K. Wood, Certified Residential Appraiser, discussed inspections of this parcel. One formal inspection took place on August 15, 2007 (fencing was down in spots, hay was tall and uncut, and there was no evidence of cattle), and informal inspections (to and from work and shopping in the area) confirmed fence damage and the absence of cattle. Although no formal inspections occurred in 2008, informal inspections while driving in the area showed no evidence of cattle. Multiple inspections in 2009 and 2010 confirmed new fencing along Hwy 85 and the presence of cattle.

Ms. Wood’s inspection sheet dated August 15, 2007 noted that the construction of Lowes was in progress, construction debris was evident, fencing was absent, and there was no evidence of grazing. She recommended removal of agricultural classification for tax year 2008. Also, inspection sheets and photographs show no fencing on the west side of Schedule No. 0435308, along Hwy 85 (detention pond under construction by CDOT), contrary to reports by Petitioner that fencing was present along the highway. Ms. Wood’s inspection sheet dated August 3, 2009, reported new fencing along Hwy 85 and a new water tank but no cattle. Her inspection on October 27, 2009 reported cattle and designated 2009 as the first qualifying year for agricultural classification.

The Board finds that the Lowes parcel did not qualify for agricultural classification in 2007 and 2008; fencing was damaged or missing, the construction of the Lowes store and a detention area to the west resulted in fence removal during this period, and no evidence of grazing or income was provided. Because agricultural classification requires proof of grazing during 2007, 2008 and 2009 for tax year 2009 and during 2008, 2009 and 2010 for tax year 2010, this criteria was not met.

Northern Parcel (28.69 acres; Schedule Nos. 0402725, 0402727, 0469423, 0469461, and 0469465-66)

Respondent's witness, Mr. Booth, described this parcel as part of a larger grazing area bordered on the east by Interstate 25, including 35.852 acres owned by Petitioner (agriculturally classified) and additional leased land owned by another entity (agriculturally classified).

Mr. Booth described terrain as variable, ranging from level to rolling hills and including natural washes and draws. Cattle move freely between the four water tanks located north of the Factory Outlets, the best grazing within the Atrium Drive roundabout, and the best shade in the hilly, treed northern end. He testified to introducing 20 to 25 head of cattle (as few as five or six in dry years) annually in late April and early May, weather permitting and after fence repairs, and they were removed in October or November. Fencing existed at the roundabout with gates on the north and northeast sides to regulate cattle movement, but constant repairs were required because of illegal vehicle and foot traffic across the pasture to the Factory Outlets from the residential area to the northwest. Interior fencing existed within this greater pasture area and was in disrepair, allowing cattle movement throughout. Mr. Booth testified that terrain and distance from inspection sites likely concealed cattle from Respondent's view. He offered photographs of cattle grazing in 2009 but not in prior years. He provided grazing leases for tax years 2006 through 2010, but proof of income for relevant tax years was not provided.

Respondent's witness, Ms. Wood, provided inspection sheets and photographs beginning in 2003 for the North Parcel and the greater area to the north and northeast. She saw no evidence of cattle other than one-to-two-year old droppings (prior to 2003) but noted weeds, uncut hay, and missing or damaged fencing. Ms. Wood's notes from August 15, 2007 indicated cattle on land to the north and northeast but not on the North Parcel (uncut hay and damaged and missing fencing); she concluded that fencing separated the North Parcel from adjacent areas and did not consider the parcels integrated. Ms. Wood's notes from August 16, 2007 included Schedule 0469461 (within the North Parcel) as "possibly grazed by cattle", this being the witness's only notation that cattle might have been present during the years in question. While no inspections were made in 2008, Ms. Wood saw no cattle in the North Parcel while informally driving in the area. In August of 2009, she observed a new gate at the northeast side of the roundabout and later observed cattle on the North Parcel, at which time she recommended 2009 as the first qualifying year for agricultural classification.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified for tax year 2009.

The question before the Board is freedom of movement throughout the North Parcel and the greater area to the north and northeast. Respondent's note that Schedule No. 469461 was "possibly grazed by cattle" supports Respondent's contention that damaged and missing fencing provided freedom of movement. Petitioner's witness testified that continual pedestrian and vehicle use of the roundabout gate allowed access to superior forage within the roundabout. While Ms. Wood saw no evidence of cattle during her informal travel on Atrium Drive to the outlets, Mr. Booth discussed the

transient nature of cattle from grazing areas to water tanks to shady northern areas where they might not be seen.

Mr. Booth testified that damaged and missing fencing allowed freedom of movement throughout the North Parcel and adjoining grazing areas in 2007 and 2008, but no probative evidence supports this testimony. During the same period, Respondent's witness provided extensive evidence of the absence of cattle and the absence of evidence of grazing. Additionally, Petitioner provided no proof of income for tax years 2007 and 2008. The Board is not convinced that Petitioner has met its burden of proof that the North Parcel should be classified agriculturally.

Valuation (Dockets 54062, 54064 and 56153)

The subject parcels are grouped by location (refer to the colored map on page 73 of Respondent's Exhibit D-1). They total 73.39 acres or 3,196,868.4 square feet.

Group A in the Blue Tract (within and north of Atrium Drive)
R0469423, R0469461, R0469465, R0469466, R0402725 and R0402727

Group B in the Blue Tract (south of Atrium Drive)
R0472316, R0435308, R0469483, R0469482 and R0402726

Lots 2, 3 and 4 in the Green Tract (west/northwest of Atrium Drive)
R0472310, R0472311 and R047312

Based on vacant land classification, Petitioner is requesting a value of \$4,955,146.00 for each tax year 2009 and 2010 (\$1.55 per square foot). Respondent assigned a value of \$17,900,762.00 for each tax year.

Interstate 25, traveling north/south between Denver and Colorado Springs, bisects the town of Castle Rock, its downtown core and established residential and commercial development to the east and newer development, including the subject parcels, to the west: the Castle Rock Factory Outlets immediately west of I-25 and supported by restaurants, a hotel, and miscellaneous retail; the subject commercial parcels adjacent to the outlets and bordered on their west by U.S. Hwy 85; Lowe's Home Improvement Warehouse south of the subject parcels; Castlegate Apartments and Primrose Preschool north of the subject parcels; and the large Meadows Subdivision and nearby middle and high schools west of U.S. Hwy 85.

Meadows Parkway, located south of Lowe's, is currently the only direct access to I-25 from the west. There is no dispute that a second access is vital due to growth and congestion. While dozens of potential road alignments have been proposed over the years, two were under consideration throughout the base period: Castlegate Drive North, which would originate from the southwest at Meadows Drive and travel north and northeast around the northern border of the Castlegate Apartments to I-25; and the Atrium Alignment, which would originate from Meadows Drive and intersect a portion of the green tract and the subject's circular Atrium Drive to meet I-25. Funding was a significant issue during this depressed-economy time frame and was, in part, the

reason for the delayed decision. Neither route selection nor condemnation had occurred as of the assessment date.

Petitioner’s witness, Jack A. Vickers, owner of Dev-Vic, marketed the subject parcels throughout the base period despite the uncertainty of the alignment and questions from potential buyers about access and visibility. One of the four parcels in the green tract (Lot 1) was sold in 2006, and a Primrose Preschool and Day Care was built; roads, water/sewer, and other infrastructure were installed in this tract at that time. Regency Centers made and withdrew an offer to build a retail shopping center in the blue tract due to uncertainty of the road alignment; no infrastructure exists in this blue area.

Petitioner, while not presenting an independent appraisal, did not contest Respondent’s per-square-foot analysis or 14% discount rate. Mr. Vickers disagreed with Respondent’s nine-year absorption period, rather estimating a 20-year period based on an Atrium Alignment selection: ten years for alignment determination, vertical grade decision, right-of-way acquisition, re-configuration of roads and infrastructure, and re-platting; and an additional estimated ten years to sellout.

Petitioner requested a value of \$1.55 per square foot or \$4,955,146.00 for each of the tax years. Mr. Vickers based this figure on one or both scenarios: a long period of stagnation during the decision process resulting in a twenty-year absorption period; or a higher discount rate based on a sale to a speculative buyer.

Respondent presented a market approach to value concluding to values for each group of parcels listed below; assigned values are also shown. Respondent’s witness, Robert D. Sayer, Certified General Appraiser, presented comparable sales and market analyses for the blue and green tracts.

	<u>Assigned Values</u>	<u>Indicated Values</u>
<u>Blue Tract (Group A)</u>	\$ 6,940,633.00	\$ 4,811,485.00
<u>Blue Tract (Group B)</u>	\$ 7,212,447.00	\$ 5,219,598.00
<u>Green Tract (Lots 2, 3 and 4)</u>	\$ 3,747,682.00	\$ 2,957,724.00

Blue Tract Mr. Sayer applied qualitative adjustments to comparable sales and concluded to \$7.00 per square foot. Although the parcels, un-subdivided raw land, do not qualify for present worth discounting, discounting was applied to address the uncertainty of the road alignment. With an absorption period of nine years and a discount rate of 14%, values of \$3.85 per square foot or \$4,811,485.00 for Group A and \$3.85 per square foot or \$5,219,598.00 for Group B were indicated.

Green Tract Mr. Sayer valued Lots 2, 3 and 4 individually. He applied qualitative adjustments, concluding to values of \$9.00, \$9.00, and \$8.00 per square foot, respectively. Present worth calculations, based on an absorption period of nine years and a discount rate of 14%, concluded to values of \$4.95, \$4.95, and \$4.40 per square foot, respectively. Because all three fell

below the value of raw land (\$5.00 per square foot based on raw land comparable sales) reliance on these indications was prohibited by the Colorado Supreme Court, Mr. Sayer therefore concluded to raw land values of \$537,996.00, \$910,404.00, and \$1,509,354.00, respectively. *El Paso County Board of Equalization v. Craddock*, 850 P.2d 702, 707, n. 4 (Colo. 1993).

Mr. Sayer’s absorption period of nine years was based on the single sale in 2006 of the Primrose Preschool and Daycare, formerly within the green tract, concluding an absorption rate of .5 units per year or six years for the remaining three parcels. Addressing the uncertainty of future road alignment, he increased the absorption rate another three years. Mr. Sayer’s discount rate of 14% is the highest allowed by the Division of Property Tax.

Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property for tax years 2009 and 2010 was incorrect.

The Board finds that Respondent’s conclusions of \$7.00 per square foot for blue tract parcels, \$9.00 per square foot for Lots 2 and 3 (green tract) and \$8.00 for Lot 4 (green tract) were supported by market data. Respondent’s discount rate of 14% is not disputed. However, the Board finds that Respondent’s nine-year absorption period, derived from the sale of one lot within the green tract, does not adequately address sellout for this large commercial development. Alternately, the Board finds Petitioner’s twenty-year absorption period excessive; while the Board recognizes the complexity of the alignment decision and changes required to the subject parcels if Atrium Drive is selected, it also acknowledges the premier location and anticipated commercial demand of the subject development. An absorption period of fifteen years is estimated.

Recalculation of Respondent’s market value conclusions with application of present worth (14% discount rate and 15-year absorption) concludes as follows. Green tract parcels are based on raw land value.

Blue Tract	Group A Parcels	\$3,611,738.20
Blue Tract	Group B Parcels	\$3,918,087.68
Green Tract	Lot 2 (raw land value)	\$ 537,966.00
Green Tract	Lot 3 (raw land value)	\$ 910,404.00
Green Tract	Lot 4 (raw land value)	\$1,509,354.00

ORDER:

Dockets 54064 and 56153, pursuant to agricultural classification, are denied.

Pursuant to valuation, Respondent is ordered to reduce the 2009 and 2010 actual values of Dockets 54062, 54064 and 56153 to \$10,487,549.88.

The Douglas County Assessor is directed to change his/her records accordingly.

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 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.

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



DATED and MAILED this 2nd day of May, 2012.

BOARD OF ASSESSMENT APPEALS

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Gregg Near

A handwritten signature in black ink, appearing to read "MaryKay Kelley".

MaryKay Kelley

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

A large, stylized handwritten signature in black ink, appearing to read "Milla Crichton".
Milla Crichton