

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHARD G. FROHLICK,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 54566</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 15, 2011, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by Oren "Von" Limbaugh, Esq. Respondent was represented by Michelle Bush, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Dockets 54566 and 54567 have been consolidated for purposes of the hearing only.

Subject property is described as follows:

1501 South Acoma Street, Denver, Colorado
Denver County Schedule No. 05226-02-020-000

The subject is a vacant parcel zoned I-1 (industrial). The 29,680 square-foot level site is fenced with chain link. All utilities are available.

Petitioner is requesting an actual value of \$135,000.00 for tax year 2009. Respondent assigned a value of \$300,800.00.

Petitioner presented the market approach to value, reconciling to a value of \$135,000.00. Petitioner's witness, Robert D. Decker, MAI of Decker Associates, Inc., presented an "as is" market approach with two base period sales (two post-base-period sales were omitted from consideration) with sale prices of \$4.00 and \$4.07 per square foot. Mr. Decker assigned most weight to Sale 1 with an adjusted sale price of \$4.55 per square foot, reconciling to \$4.50 per square foot for the subject.

Post-hearing, Petitioner presented ten comparable sales ranging in sale price from \$2.25 to \$4.02 per square foot. Two sales were located in Northeast Denver, one in Northglenn, four in Commerce City, and three in Henderson. No adjustments or analysis were presented

Petitioner's witness, Phil Baggerly, commercial real estate broker, investor and developer, considered highest and best use of the following parcels to be future redevelopment; the subject parcel, adjoining parcels to the south (houses and a church owned by other entities), and 1575 South Acoma Street (owned by Petitioner and the subject of the consolidated Docket 54567). Mr. Baggerly saw no "as is" value in the subject property. He concluded to a broker's opinion at \$5.00 per square foot for future assemblage.

Respondent presented the following indicators of value, reconciling at \$330,500.00:

Market:	\$330,500.00
Cost:	\$330,500.00
Income:	N/A

Respondent presented an indicated value for the land by the market approach of \$11.00 per square foot or \$326,500.00. Respondent's witness, Donald P. Delmendo, Certified General Appraiser, presented five comparable sales ranging in sale price from \$11.67 to \$26.29 per square foot. After adjustments were made, the sale prices ranged from \$11.09 to \$23.66 per square foot.

Post-hearing, Respondent presented three comparable sales ranging in sales price from \$8.81 to \$13.66 per square foot. After adjustments, prices per square foot ranged from \$9.43 to \$13.52 per square foot.

Respondent presented a cost approach, concluding to a value of \$330,500.00 based on an estimated value of the subject's perimeter fence of \$4,000.00 and site value of \$326,500.00.

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

The Board gives no weight to Mr. Baggerly's broker opinion. He asserted that highest and best use of the subject is assemblage with other properties and future redevelopment. The Board is convinced that future redevelopment is speculative. In *Board of Assessment Appeals v. 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." *Id.* at 154.

The Board notes Petitioner's and Respondent's contradictory data on Petitioner's first set of two base-period comparable sales: Petitioner reported Sale 1's size as 87,556 square feet, while Respondent quoted 62,800 square feet with location in a very different marketing area and purchase for assemblage; and Petitioner described Sale 2 as lying in a mixed-use area, while

Respondent portrayed a predominantly-residential neighborhood, steep terrain with questionable access, and with no direct access to electricity.

The Board notes that Petitioner's second set of nine comparable included only one sale located in Denver (Sale 1 on 2.01 acres sold for \$87,556.00). All others were located at a considerable distance from the subject in different marketing areas (Commerce City, Northglenn, and Henderson).

The Board notes Petitioner's and Respondent's contradictory data on Respondent's initial five comparable sales: Sale 1 was reported by Respondent as vacant, while Petitioner described a superior-quality 20X30 improvement; Sale 2 was described by Respondent as having older improvements likely to be razed, while Petitioner described a tenant-occupied improved site purchased by RTD; Sale 3, non-industrial, was described by Respondent as being located in a mixed-use area with some residential use and as having some improvements slated for demolition, while Petitioner reported that the site was purchased for assemblage and construction of apartment buildings; Sale 4 was reported by Respondent as an industrial site located seven blocks from the subject, while Petitioner described it as considerably smaller and purchased by a neighboring business for parking; and Sale 5 was described by Respondent as being in a mixed-use area with no value assigned to the fire-damaged improvements, while Petitioner reported business zoning with new public housing improvements.

The Board notes that Respondent's second set of three comparables included little detail. Sale 1 is significantly larger than the subject at 2.54 acres. Sale 2 was slightly smaller and located relatively nearby. Sale 3 was presented in Respondent's initial appraisal (Sale 1) and reported by Petitioner as having a large improvement.

The Board finds that while Respondent's sales are located closer to the subject, Respondent failed to address all features and should have applied additional adjustments. The Board concludes to a value below the low end of the range indicated by Respondent, which is supported by data from both parties and by insufficient adjustments by Respondent. The Board concludes that the value should fall below \$9.43 per square foot based on Respondent's sales.

The Board finds that Petitioner's sales were not located within the subject's competitive market area; however, they were representative of industrial uses. The Board is convinced that the subject's location was superior compared to the sales presented by Petitioner, indicating a price above \$4.55 per square foot.

The Board concludes that the 2009 actual value of the subject property should be towards the mid-point of the range indicated by the comparable sales presented by the parties, and should be reduced to \$7.00 per square foot or \$207,760.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$207,760.00.

The Denver 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.

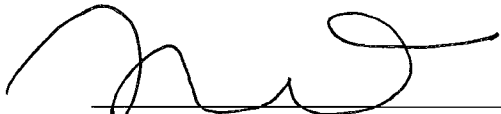
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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


DATED and MAILED this 18th day of January, 2012.

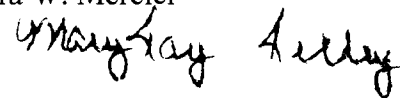


I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Milla Crichton

BOARD OF ASSESSMENT APPEALS


Sondra W. Mercier


MaryKay Kelley