

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

Docket Nos.: 55549

Petitioner:

**TECH REAL ESTATE HOLDINGS LLC,**

v.

Respondent:

**DOUGLAS COUNTY BOARD OF COMMISSIONERS.**

**ORDER ON MOTION FOR CLERICAL CORRECTION**

**THIS MATTER** came before the Board of Assessment Appeals on October 6, 2011, Debra A. Baumbach and Gregg Near presiding. The Board issued an Order denying Petitioner's appeal on November 1, 2011. On November 10, 2011, the Board received Respondent's Douglas County Motion for Clerical Correction.

The Board hereby amends its Order dated November 1, 2011 in the above-captioned appeal to reflect that **the Board was convinced that the value of the subject property for tax years 2007 and 2008 should be reduced to Respondent's recommended value of \$1,757,054.00.**

**The Douglas County Assessor shall amend his/her records accordingly.**

**DATED/MAILED** this 18<sup>th</sup> day of November, 2011.



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

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

Milla Crichton

**BOARD OF ASSESSMENT APPEALS**

A handwritten signature in black ink, appearing to read "Diane M. DeVries".

Diane M. DeVries

A handwritten signature in black ink, appearing to read "Gregg Near".

Gregg Near

<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>TECH REAL ESTATE HOLDINGS, LLC</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 55549</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on October 6, 2011, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Robert R. Duncan, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2007 and 2008.

Subject property is described as follows:

**7800 Moore Road  
Littleton, Colorado 80125  
Douglas County Schedule No. R0001476**

The subject property consists of 299.6 acres with 21 buildings. The property has historically been used for development, production and testing of explosives. Approximately 110 acres of the property are zoned agricultural and approximately 180 acres are zoned general industrial.

The property is located west of U.S. Highway 85 (Santa Fe Drive) on the east side of Moore Road approximately three miles west of the Town of Louviers. Topography of the land is rolling with two large drainages crossing on a diagonal from southwest to northeast. The southerly drainage, situated in the southeast corner of the property, contains approximately 30 acres of flood plain. The agricultural-zoned land is situated in the northerly portion of the parcel.

The property has development restrictions resulting from its location within a Water Supply Zone Margin A district that requires all improvements to provide a renewable water source. The

existing improvements are served by a shallow well that delivers non-potable water used only for flushing toilets and washing.

The property is also subject to an environmental covenant placed on the property on May 30, 2007. The covenant restricts uses on approximately 86.28 acres situated more or less within the middle 1/3 of the property. The restrictions include the following:

1. Prohibition on residential and public use. Existing industrial use is permitted.
2. Prohibition on use of water and well construction.
3. Prohibition on irrigation cultivation.
4. Prohibition on construction of surface water containment structures.

Modifications to the covenant are permitted subject to approval by the Colorado Department of Public Health and Environment.

Petitioner's witness, Mr. Howard Wichter, testified to his personal familiarity with the property and stated the land is not level but is divided east to west by two large ravines. Mr. Wichter indicated the environmental covenant resulted from historical use of the property for development of explosives and that some hazardous byproducts of these processes have contaminated a portion of the property.

Petitioner's witness, Mr. Peter Elzi, a Certified General Appraiser, testified the majority of the property is unusable for any purpose except for grazing. Mr. Elzi applied a lease rate of \$3.00 per acre as appropriate based upon a 2006 lease for approximately 150 acres for a property nearby C-470 and a 2009 lease established for the subject property at the same rate.

Mr. Elzi also indicated the topography of the property limits its utility. The majority of the mostly level ground lies within the middle of the ownership and is influenced by the environmental covenant.

Mr. Elzi stated residential development of the northerly portion of the property is not possible because of the Margin A classification. Petitioner pointed to property owners from a residential development adjacent to the northwest of the subject who found it necessary to install cisterns because of declining water production from existing wells and inability to drill new ones.

Petitioner accepted the value of the land for the 20 acres actually used for industrial purposes of \$96,000.00 estimated by the Douglas Assessor. Petitioner also accepted the Assessor's estimates of value of the 21 buildings at \$667,799.00, with the exception of buildings #6, #9, #10, #12, #13, and #14, which, according to Petitioner, were not usable. After removing these buildings from the total value of improvements, Petitioner concluded to the new total of \$607,759.00. In addition, Petitioner applied the income approach and concluded to \$5,800.00 as the value for the remaining 277.75 acres of the property.

Petitioner presented an indicated value of \$709,559.00 for the subject property (value of the industrial land (\$96,000.00), plus value of the buildings (\$607,759.00), plus value of the remaining 277.75 acres (\$5,800.00)).

Respondent presented the following indicators of value:

Market:	\$0.00
Cost:	\$1,757,054.00
Income:	\$0.00

Respondent's witness, Robert D. Sayer, a Certified General Appraiser, applied the cost approach to value.

As noted earlier, the parties agreed upon the value of 20 acres more or less used for industrial purposes at \$96,000.00. Mr. Sayer applied a depreciated value determined by use of the Marshall Valuation Service Manual for 21 buildings at \$708,454.00 with no value applied to building # 40.

For the remainder of the property, Mr. Sayer presented six comparable sales ranging in sale price from \$3,255.00 to \$9,981.00 per acre and in size from 105.2 to 246.01 acres. After adjustments were made, the sales ranged from \$1,606.00 to \$5,490.00 per acre.

Mr. Sayer indicated the sales shared similar features with the subject including topography, flood plain, Margin A restrictions and, in one case, a conservation easement. The sales took place during the time period from November 2002 to January 2006.

Mr. Sayer stated it was necessary to research older sales because of the many unique features of the subject property. A unit value of \$3,500.00 per acre was adopted.

Mr. Sayer applied the unit value of \$3,500.00 per acre to the subject's 299.6 acres for a land value of \$1,048,600.00. Mr. Sayer then added the depreciated value of the improvements to the land value for a value opinion by the cost approach of \$1,757,054.00.

Petitioner contends six of the buildings counted by Respondent are fully depreciated and of no value. Petitioner feels the Assessor's use of very dated sales invalidates their use and the sales presented are too distant from the subject. Petitioner contends that the land has difficult terrain to develop, no renewable water and an environmental covenant that renders it unusable for any purpose but grazing. According to Petitioner, the only method applicable in that situation is to capitalize the grazing income by the rate provided by the State.

Respondent does not agree with Petitioner's reliance upon the income approach and notes there are a number of uses possible under the current zoning that do not require renewable water sources. Respondent also contends the subject topography is approximately 50% usable.

Petitioner presented insufficient probative evidence and testimony to show that the tax year 2007 and 2008 valuation of the subject property was incorrect.

The Board was not convinced that the only reasonable use of the majority of the subject property was for grazing. There are multiple uses allowed within both the general industrial and agricultural zone districts.

The Board was also not swayed by Petitioner's use of the statutory cap rate applied to agricultural income when the property was not at that time actually in use as agricultural. Petitioner's appraiser indicated no attempt was made to research market-derived capitalization rates.

**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).

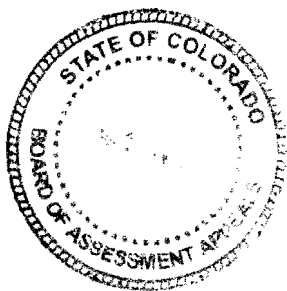
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 1st day of November, 2011.



**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Gregg Neat*

Gregg Neat

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

*Milla Crichton*

Milla Crichton