

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WELSH UPRROW LLC,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 56935</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 21, 2011, MaryKay Kelley and Louesa Maricle presiding. Petitioner was represented by Timothy J. O'Neill, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2010 actual value of the subject property.

Subject property is described as follows:

**2506 Spruce Street, Boulder, Colorado
Boulder County Schedule No. R0106852**

The subject property is an irregularly shaped, commercial parcel of land containing 29,015 square feet or 0.67 acre. It is an interior parcel located between Spruce and Pearl Streets and between Folsom and 26th Streets. It is part of a former Union Pacific Railroad right-of-way through the middle of the block that was abandoned and sold to adjacent landowners in 1984. The majority of the subject site is a long narrow strip extending the length of the block, similar to an alley. This major portion of the parcel is approximately 530 feet long and 50 feet wide. A small, 0.06-acre tab-shaped portion of the site extends south from the main strip of land behind the single family residence at 2537 Pearl Street. The subject property has a small area of frontage and access from 26th Street at the east end of the block. An irrigation ditch prohibits access from Folsom Street. A portion of the site has asphalt paving, and there is a fence along a portion. The parcels, on the north side of the block, the subject parcel, and the residence at 2537 Pearl Street, on the south side of the block, are owned by multiple legal entities involving the Welsh family. The other properties on the block have unrelated ownership. A covenant granted by the city allowed the residence at 2537 Pearl Street to be enlarged, encroaching onto the subject, and a detached garage structure to be built on the

subject site. The small size of the residential lot would not otherwise have permitted an addition or a garage. The subject site provides driveway access to the residence at 2537 Pearl Street.

Petitioner is requesting an actual value of \$365,000.00 for the subject property for tax year 2010. Respondent assigned a value of \$934,000.00 for the subject property.

Petitioner contends that Respondent has not properly considered the loss of utility (functional obsolescence) because of the subject's interior location, shape, and limited access. Respondent contends that the subject site is assembled, in fact, with several adjacent lots owned by legal entities involving members of the Welsh family. Therefore, it is proper to value the subject site as part of the combined larger land area on this block owned by the Welsh family. Both parties used the market approach to estimate the value of the property.

Petitioner presented an appraisal of the subject property prepared by William C. Graff, MAI, who is a licensed Certified General Appraiser in the State of Colorado. Mr. Graff testified that the subject parcel was purchased from the railroad by the owner of the residence at 2537 Pearl Street. Title was later transferred to the current owner in a non-arm's-length transaction, but it has been continuously attached to the residence. The witness testified that development of the subject site is severely limited because of its interior location, physical shape, and the development setbacks required by the zoning. Development as a stand alone site is unlikely; it needs assemblage with adjacent land to maximize its use. The subject block does not have intense commercial development, so the small businesses on the four lots on the north side of the block, all owned by various Welsh entities, do not need the subject for parking or other uses. The subject site is tied by a city-granted covenant to the residence at 2537 Pearl Street. The covenant will be removed if the house is demolished and the property redeveloped. However, until such time as that occurs, the subject is an integral part of the residential property. Even tied to the small residential lot, the subject has a severe functional problem. The witness testified that the diminished use warrants a 50% downward adjustment to the value of the property. The witness presented five comparable sales and, after considering adjustments, concluded to an initial market value of the subject, as if unaffected by the interior location, shape, and access, of \$25.00 per square foot or \$730,000.00 rounded. Discounting by 50% for the functional issues described results in a conclusion of market value of \$365,000.00.

Respondent's witness, Mr. Samuel M. Forsyth, a Certified General Appraiser with the Boulder County Assessor's office, presented a market approach with four comparable sales. After adjustments were made, the witness concluded to a value for the subject of \$37.00 per square foot. The witness testified that the subject, in fact and in use, has been assembled to the adjacent Welsh-owned parcels. He testified that the subject is used for parking by employees and customers of some of the adjacent businesses on the block. Mr. Forsyth testified that the highest and best use for subject and the adjacent assembled parcels is for redevelopment with higher density commercial uses at some time in the future. Therefore, it is proper to appraise the subject site as part of the larger economic unit of commercial properties on the north side of the block owned by the various Welsh entities. For this reason, an adjustment for diminished function of the subject is not warranted. Using the \$37.00 per square foot value, the witness concluded to a rounded market value for the subject of \$1,073,600.00.

Respondent requested that the assigned actual value of \$934,000.00 for the subject property be upheld.

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

The Board concurs with Petitioner that the subject has poor functional utility as a stand alone parcel and that development might not be possible in its current configuration. Though there may be some common ownership interests with the parcels on the north side of the block, the properties are owned by different legal entities, and Respondent did not provide adequate support to prove that the subject has been assembled with the north parcels. Evidence presented did not show that use of the subject site is dominated by trespassers using it for parking or that there is inadequate parking to serve the adjacent businesses elsewhere. No evidence was presented to show that any or all of the Welsh owned properties are likely to be redeveloped as an assembled property within the near future. The Board agrees with Petitioner's witness and Respondent that eventual redevelopment is the highest and best use, but as of the date of value, there is no support to show how long it might be before that could occur, so redevelopment is still considered speculative.

The Board finds that, as a result of the city-granted covenant, the residential improvements that encroach onto the property and access to the residence, the subject is tied to the residential property at 2537 Pearl Street. It is reasonable to argue that those conditions might constitute an assemblage with the residential parcel. The subject could not be redeveloped along with the parcels on the north side of the block without causing significant loss in value or a major change in use to the residential property to the south. Even if the subject and the residential property were considered an assemblage, the subject site has significant functional obsolescence because of its size and irregular shape relative to the small residential property. Therefore, the Board concludes that the subject parcel is tied to the residential property at 2537 Pearl Street for the foreseeable future, which is more binding than the location adjacent to the developed parcels on the north side of the block. Though Respondent may consider the reasonable future use of the property, the Board finds that Respondent's assumption that the subject is an assemblage with all the various Welsh family entities is speculative at this time. Pursuant to case law and the Assessor's Reference Library (ARL), reasonable future use of real property is an element of fair market value and is relevant to a property's current market value for tax assessment purposes. *See Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1988); ARL, Vol. 3, p. 2.3. However, speculative future uses cannot be considered in determining present market value. *Id.*

The Board concludes that the 2010 actual value of the subject property should be reduced to \$365,000.00.

ORDER:

Respondent is ordered to reduce the 2010 actual value of the subject property to \$365,000.00.

The Boulder 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).

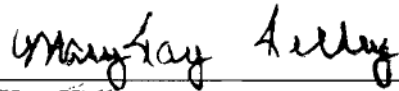
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 20 day of May 2011.

BOARD OF ASSESSMENT APPEALS

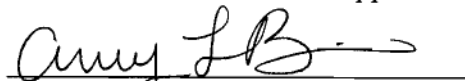


MaryKay Kelley



Louesa Maricle

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


Amy Bruins

