

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 59874

Petitioner:

CHRISTY M. HORVAT,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 28, 2012, Debra A. Baumbach and MaryKay Kelley presiding. John J. Horvat appeared pro se on behalf of Petitioner. Respondent was represented by Writer Mott, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**11625 West 62nd Place, Arvada, Colorado
Jefferson County Schedule No. 166705**

The subject is a vacant 22,100 square foot parcel. It is an irregular-shaped site located in a cul- de- sac along with a commercial warehouse, a condominium project, and a restaurant. Absent visibility, it is a destination site.

Respondent assigned an actual value of \$88,400 for tax year 2011. Petitioner is requesting a value of \$44,000.

Mr. Horvat, Real Estate Broker and developer, discussed the site's building limitations: an irregular site and setbacks; poor access and lack of visibility; and P-1 zoning, which allows only business services, clinics, financial institutions, day care, office, market and bakeries.

Mr. Horvat considered highest and best use to be a condominium/townhome project, which would require a zoning change. He argued that development per P-1 zoning would not yield

maximum productivity based on building costs and potential income; and that uses allowed by P-1 zoning already existed nearby or were not feasible; a financial institution requires greater visibility, a day care exists across the street, two nearby major grocery stores include bakeries, and office rents would be too low to offset construction cost.

Petitioner's witness, Les Pfenning, Real Estate Broker, acknowledged that Colorado statute requires valuation of a property in the condition in which it existed as of January 1 assessment date of the tax year being appealed. Thus, the subject must be valued based on its P-1 zoning classification as it existed on January 1, 2011. Based on P-1 zoning, he agreed that destination use with a single tenant was most feasible. He addressed Respondent's sales but considered none to be comparable. Sales One and Four lie within or adjacent to large commercial subdivisions; he argued that their adjusted prices should be reduced by \$2.00 per square foot. Sale Three's zoning permits a building almost seven times larger than is allowable for the subject site. Mr. Pfenning estimated a value for the subject between \$1.50 (\$33,150) and \$2.00 (\$44,200) per square foot based on Respondent's comparable sales. Petitioner's requested value of \$44,000 is based on this analysis.

Respondent presented a market approach to derive a value of \$99,450 for the subject property. Respondent's witness, Tammy J. Crowley, Colorado General Appraiser, presented four comparable sales ranging in sale price from \$4.13 to \$5.63 per square foot. After adjustments were made, the sales ranged from \$4.47 to \$5.14 per square foot. Placing greatest weight on Sales One (\$4.47 per square foot) and Sale Three (\$4.54 per square foot), she concluded to a value of \$4.50 per square foot.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2011.

The Board acknowledges Petitioner's highest and best use argument. However, valuation based on residential zoning is speculative until the city approves re-zoning for an alternative use; the Board lacks jurisdiction to hear zoning arguments. Current use (P-1 zoning) is supported by case law. "Speculative future uses cannot be considered in determining present market values." *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 153 (Colo. 1988).

With regard to valuation in use as of January 1, 2011, the Board was presented four comparable sales by Respondent, none by Petitioner. The Board agrees that Sale Two, surrounded by school district land, is less similar to the subject's commercial site than the other sales. While acknowledging that differences in zoning might result in additional adjustments, the Board was not provided zoning data for Respondent's sales and cannot make additional adjustments. Petitioner did not provide market support for a value lower than the assigned value of \$88,400.

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 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 July, 2012.



BOARD OF ASSESSMENT APPEALS

Debra A Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

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

Milla Crichton
Milla Crichton