

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THOMAS R. ORBAN,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas R. Orban Address: 4645 West Warren Avenue Denver, CO 80219 Phone Number: (303) 934-6388 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 38281</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 20, 2001, Debra A. Baumbach and Karen E. Hart presiding. Petitioner appeared pro se via teleconference call. Respondent was represented by Jennifer Wascek Leslie, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**BEG 715 FT N 30 FT E SW COR NW4 NW 5 SEC 3 TH E 417/40 FT
TH N 219/35 FT TH NELY ALG S NL Y P RR ROW 427 FT TH S
270/25 FT TO POB 34/3/66
(Adams County Schedule No. R0086231)**

Petitioner is protesting the 2001 actual value of the subject property, a 2.35-acre parcel located at the southeast corner of Smith Road and Tower Road in Aurora, Colorado.

ISSUES:

Petitioner:

Petitioner contends that there is currently no access to the property. There is a City lawsuit with Union Pacific over the Smith Road right-of-way. This significantly impacts the value of the subject property.

Respondent:

Respondent contends that the full affect of the Smith Road access issue on property values cannot be known until some conclusion of the City of Aurora lawsuit is issued. However, Respondent has applied a vacant land discount procedure with a ten-year sellout period to account for the access issue.

FINDINGS OF FACT:

1. Mr. Thomas R. Orban, Petitioner, presented the appeal on his own behalf.
2. Petitioner presented an indicated value of \$28,660.00 for the subject property.
3. Petitioner presented no comparable sales.
4. Mr. Orban testified that Smith Road is the primary access road to his property. Smith Road is owned by Union Pacific and is leased to the City of Aurora. The lease is up for renewal and Union Pacific has asked for a lease rate of \$7.1 million, a tremendous increase over the previous lease rates. As a result, the City of Aurora is in litigation with Union Pacific and access to the subject property via Smith Road is in question.
5. The City of Aurora does not allow property access within 300 feet of a major intersection. Therefore, he does not have sufficient frontage to allow access from Tower Road. The lack of access greatly reduces the value of his property.
6. Regarding Respondent's presented sales, Mr. Orban does not feel they are comparable to his property as they have road access.
7. Under cross-examination, Mr. Orban testified that he has had access to his property from Smith Road in the past, but has not had access from Tower Road. He bought the subject property in 1975 and has always rented it to the neighbor, who uses it for hay storage, equipment storage, etc. The neighbor accesses the property via his own property. Mr. Orban lost access from Smith Road via notice from the City of Aurora in a letter dated June 25, 2001.
8. Upon questioning from the Board, Mr. Orban testified that he does not have the money or time to join in the City's lawsuit against Union Pacific. His lease to his neighbor is a month-to-month lease for \$200.00 per month.

9. Petitioner is requesting a 2001 actual value of \$28,660.00 for the subject property.

10. Respondent's witness, Mr. Don DeLay, a Registered Appraiser with the Adams County Assessor's Office, presented an indicated value of \$87,011.00 for the subject property, based on the market approach.

11. Respondent's witness presented 3 comparable sales ranging in sales price from \$1.50 to \$1.57 per square foot and in size from 71,874 to 191,559 square feet. No adjustments were made to the sales.

12. Mr. DeLay testified that he determined a vacant land discounted value for the property value of \$87,011.00. His calculation included a full market value of \$1.50 per square foot, an estimated 10-year sellout period, and a 12% discount rate. The resulting discounted value is \$.85 per square foot. The 10-year discount period was determined based on his experience. He does not feel that the property would sell within a 12-month period, considering the access issue.

13. Mr. DeLay testified that he became aware of the Smith Road dispute at the County Board of Equalization hearing. He has had difficulty in obtaining information from the City of Aurora regarding a time frame for the lawsuit. They used the 10-year sellout period due to the lawsuit.

14. Mr. DeLay testified that his Comparable 1 is located one block east of the subject. Comparables 2 and 3 are located south of the subject. He determined an actual value of \$1.50 per square foot, or \$153,549.00, before discounting.

15. Under cross-examination, Mr. DeLay testified that he believes the previous assigned value of the subject property was too low; hence the large increase in value.

16. Respondent assigned an actual value of \$153,550.00 to the subject property for tax year 2001, but is recommending a reduction in value to \$87,011.00.

MOTIONS:

Respondent requested that this matter be held in abeyance indefinitely until such time as the Smith Road access issue is resolved. In the alternative, Respondent requested that this matter be held in abeyance for a period of six months. Respondent indicated that there are many other cases pending before the Board regarding this same issue.

Petitioner opposed the motion, concerned with how such an abeyance might affect his tax liability and responsibility. He would like the valuation issue to be timely resolved.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2001.

2. Petitioner presented sufficient evidence to prove that an access issue concerning Smith Road may **currently** impact the subject property. While the Board believes this may have an affect on the current and future value of the property, the Board was not convinced by the evidence or testimony presented that this would have affected the property value as of the assessment date of January 1, 2001. The letter from the City of Aurora notifying Petitioner of the access issue was dated June 25, 2001, nearly one full year after the level of value date of June 30, 2000.

3. Petitioner did not present any sales information to support a reduction in value. The Board reviewed the sales presented by Respondent and concluded that the full market value was well supported for the tax year in question.

4. Even so, Respondent chose to discount the value to a ten-year sellout to account for the access problem. The Board believes that this consideration is adequate for the tax year under appeal.

5. After careful consideration of all the evidence and testimony presented, the Board concluded that the 2001 actual value of the subject property should be reduced to Respondent's recommended value of \$87,011.00.

6. As to Respondent's motion requesting this matter be held in abeyance, the Board, based on the aforementioned conclusions, does not see the need to delay its decision. Any future resolution of the City of Aurora lawsuit would not have an affect on the Board's decision for the tax year under appeal.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$87,011.00.

The Adams County Assessor is directed to change his records accordingly.

Respondent's motion to hold this appeal in abeyance is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 28th day of November, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

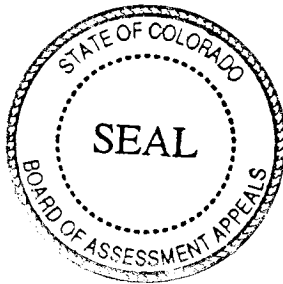
Karen E. Hart
Karen E. Hart

This decision was put on the record

NOV 27 2001

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

Diane Von Dollen
Diane Von Dollen



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