

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DEV-VIC LTD. LIABILITY COMPANY,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 49872, 49873, 49874</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 14, 2009 and May 18, 2009, Karen E. Hart and Lyle D. Hansen presiding. Petitioner was represented by Jeffrey J. Schroeder, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2007 actual value of the subject property.

The Board consolidated Docket Nos. 49872, 49873, and 49874.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lots 2, 3, and 4, Castle Pines Commercial 12, Castle Rock, Colorado
Douglas County Schedule Nos. R0472310, R0472311, and R0472312**

The subject consists of three platted commercial lots. Lot 2 contains a total of 2.47 acres; Lot 3 contains a total of 4.18 acres; and Lot 4 contains a total of 6.93 acres. The three lots contain a total of 13.58 acres or a total of 591,545 square feet of land area.

Petitioner presented an indicated value of \$1.00 per square foot or a total of \$591,545.00 for the subject property. Petitioner presented no comparable sales.

Petitioner's witness, Mr. Jack A. Vickers, III, testified that the City of Castle Rock has proposed the development of a vehicle access route from the Meadows Subdivision, located in the northwest area of the city, to commercial and retail establishments and on to Interstate 25 to the east

of the subdivision. Meadows Parkway is the main vehicle artery connecting the Meadows Subdivision to these establishments, to Interstate 25, and to the town center of Castle Rock. Meadows Parkway has experienced increasing heavy traffic and the City of Castle Rock has proposed multiple alignments for another traffic access between the residential subdivision, the commercial properties, and Interstate 25.

Mr. Vickers testified that Petitioner owns three platted commercial lots located in Castle Pines Commercial Filing 12. This filing received final approval by the City of Castle Rock on September 1, 2006. Petitioner testified that as of June 30, 2006 the three commercial lots were platted and had some infrastructure installed including roads, water, sewer, and dry utilities.

One of the proposed North Meadows Extension alignments, referred to as the Atrium Alignment, will pass through the Castle Pines Commercial Filing 12. Mr. Vickers testified that the proposed extension would cross Lots 2 and 3 and would pass adjacent to Lot 4.

Mr. Vickers testified that no decision as to which alignment will be designated has been concluded by the City of Castle Rock. As a result of this indecision, Petitioner concludes that a stigma exists on the marketability of the three lots. Petitioner argues that while the three lots have been marketed for sale to potential commercial/retail users since the date of platting, no buyers are interested in purchasing the lots because of the uncertainty that exists resulting from the indecision by the City of Castle Rock on determination of the final alignment. Petitioner is requesting that the values placed upon the three commercial platted lots be reduced to \$1.00 per square foot.

Petitioner did not present a cost approach or income approach.

Petitioner is requesting a 2007 actual value of \$591,545.00 for the subject property.

Respondent presented the following indicated values using the market approach:

Lot 2: \$ 555,800.00
Lot 3: \$1,143,000.00
Lot 4: \$1,130,818.00

Respondent's witness, Mr. Robert D. Sayer, testified that the three commercial lots were platted and had curbs, gutters, and utilities in place.

Respondent accomplished two market approaches to value: one to derive market value of the subject as improved commercial lots, and one to derive market value of the subject as unimproved raw ground.

To value the subject lots as improved commercial lots, Respondent presented eight comparable sales ranging in sales price from \$500,000.00 to \$5,000,000.00 and in size from 1.36 to 12.23 acres. For Lot 2, after adjustments were made, the sales ranged from \$8.58 to \$13.63 per square foot. For Lot 3, after adjustments were made, the sales ranged from \$10.23 to \$13.43 per square foot. For Lot 4, after adjustments were made, the sales ranged from \$6.79 to \$10.80 per square foot. Respondent concluded a commercial lot value for each lot at \$10.00 per square foot.

Respondent reduced the lot value by \$0.56 per square foot to reflect carrying costs incurred on the three commercial lots as of January 1, 2007. This amount included costs for interest, overhead, real estate taxes, miscellaneous/contingency, and an estimated return to capital investors. Respondent adjusted each lot for corner location and size concluding to a value of \$10.38 per square foot for Lot 2, \$11.33 per square foot for Lot 3, and \$7.55 per square foot for Lot 4.

Respondent concluded that fewer than 80% of the total subject lots available for sale had sold. Consequently, the subject lots meet the threshold established by the Property Tax Administrator to qualify for application of the present worth analysis to derive an indicated present worth value for the total usable area of the lots. For all three lot values, Respondent initially concluded an absorption period of 6 years. With consideration given to the pending vehicle access alignment, Respondent concluded that the developer/owner would be prevented from effectively marketing the lots for an additional 3 years. Respondent concluded an ultimate absorption period of 9 years. Respondent utilized a discount rate of 12.5%. After the present worth analysis Respondent concluded to a value of \$6.03 per square foot for Lot 2, \$6.58 per square foot for Lot 3, and \$4.39 per square foot for Lot 4.

Based on the market approach, Respondent presented an indicated value as improved commercial lots for Lot 2 of \$555,803.00; for Lot 3 of \$1,143,219.00; and for Lot 4 of \$992,858.00.

To value the subject lots as unimproved raw ground, Respondent presented six comparable sales ranging in sales price from \$822,000.00 to \$3,663,000.00 and in size from 3.103 to 8.72 acres. After adjustments were made, the sales ranged from \$4.14 to \$6.04 per square foot. Petitioner concluded an unimproved raw ground value of \$5.00 per square foot. Because the indicated value for Lot 4 after the present worth analysis was below the indicated raw land value, Respondent ultimately concluded to a value of \$5.00 per square foot for Lot 4, or \$1,130,818.00.

Respondent concluded to a value for Lot 2 of \$555,800.00; for Lot 3 of \$1,143,000.00; and for Lot 4 of \$1,130,818.00.

Respondent presented no cost approach or income approach.

Respondent assigned an actual value for Lot 2 of \$715,231.00, for Lot 3 of \$1,462,077.00, and for Lot 4 of \$1,260,728.00 for tax year 2007.

Sufficient probative evidence and testimony was presented to prove that the tax year 2007 valuation of the subject property was incorrect.

The Board agreed with Petitioner that a diminution in value on the three commercial lots has occurred as a result of the inaction by the City of Castle Rock in resolving the traffic alignment issue. The Board concluded that once the traffic alignment issue is resolved, the three commercial lots would regain their marketability. If the alignment should directly impact the three commercial lots by passing through or adjacent to those lots, the Board concluded that through condemnation proceedings, just compensation would result. If the alignment were to be concluded in the vicinity of the three commercial lots but not having a direct physical impact, the market value of those lots would return based upon the commercial lot market at that time. Due to all of the unknown issues

regarding the possible future road alignment, the Board determined there was an insufficient amount of similarly impacted sales data with which to determine a market value via the sales comparison approach as of the assessment date.

However, there was a lack of comparable sales that

Additionally, the Board was not persuaded that the present worth discount procedure could be accurately applied to the subject properties. A primary component of the procedure is the estimated years to sellout. Due to the uncertainty of the road alignment location and a lack of similarly impacted properties with which to measure an estimated sellout period, the Board concluded that an accurate sellout period could not be determined. The Board was convinced that the sales comparison approach followed by the present worth analysis would not result in an accurate market value.

The Board concluded that the subject should be valued as unimproved raw ground with additional value attributable to soft costs incurred as of January 1, 2007. There was conflicting testimony and evidence as to when certain infrastructure was in place. The Board noted that the subject plat was approved by the City of Castle Rock on September 1, 2006. With this late date in the year, the developer would have four months to install some infrastructure including curb and gutter, water and sewer, and dry utilities. The Board concluded that, with changing weather conditions into the latter part of the year, the probability of completing installation of these infrastructure elements would be diminished.

The Board's conclusion is further confirmed by Petitioner's Exhibit P. Exhibit P indicates that soft costs were expended prior to the assessment date of January 1, 2007 but that infrastructure construction costs and fees were not expended until June, July, and August of 2007. Petitioner's Exhibit P indicates that the only costs incurred as of January 1, 2007 were: platting costs and fees at \$100,000.00; roadway fees to Castle Rock at \$97,938.00; grading and erosion control letter of credit of \$45,598.00; and, construction drawing costs and fees of \$70,000.00. Total incurred costs were \$313,536.00.

The Board concluded that these costs exist as contributory value to the subject lots. These costs were allocated to each of the three lots based upon their total raw ground area. The incurred costs for Lot 2 were \$57,029.00, the incurred costs for Lot 3 were \$96,510.00, and the incurred costs for Lot 4 were \$159,997.00.

The Board agreed with Respondent's unimproved raw ground value indication for the subject at \$5.00 per square foot. The value indication not including the contributory value of the additional soft costs incurred for Lot 2 would be \$537,965.00, for Lot 3 would be \$910,405.00, and for Lot 4 would be \$1,509,355.00.

The Board concluded that the 2007 actual value of the subject lots, including the incurred soft cost would be as follows: Lot 2 \$594,994.00; Lot 3 \$1,006,915.00; and Lot 4 \$1,669,352.00. Therefore Lot 4's assigned value at \$1,260,728.00 would remain unchanged.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property as follows: for Lot 2, Schedule No. R0472310, \$594,994.00; and for Lot 3, Schedule No. R0472311, \$1,006,915.00.

The petition is denied as to Lot 4, Schedule No. R0472312.

The Douglas 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 CRS § 24-4-106(11) (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 CRS § 24-4-106(11) (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.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 19th day of June 2009.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Lyle D. Hansen

Lyle D. Hansen

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

Heather Flannery

Heather Flannery

