BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **MOBELISK, LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 51332**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 10, 2009 James R. Meurer and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Writer Mott, Esq. Petitioner is protesting the 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

18750 West Highway 72, Arvada, Colorado
(Jefferson County Schedule No. 166062)

The subject is a 69.883 acre tract that is platted as 48 industrial lots. As there are no improvements within the subdivision, both parties considered the property as one large tract.

Petitioner presented an indicated value of $700.00 for the subject property based on the minimum value assigned by Jefferson County to tracts that have no development potential.

Petitioner contends that as of January 1, 2008, there was no potential to develop the subject; therefore, it should carry the minimal value possible. Petitioner's witness testified that there were two reasons for the lack of development potential: (1) because of natural gas contamination, blowout prevention equipment was required for water wells; therefore, the property had no value; and (2) Jefferson County would not allow development of the subject without corrective action required to

the detention pond located on an adjacent property. Petitioner presented evidence that the Leyden Mine had caused underground contamination in the area that includes the subject, first recognized in 1995 based on documents in evidence. The State of Colorado Oil and Gas Conservation Commission recommended the use of blowout prevention equipment to water well drillers within one mile of the Leyden Gas Storage Facility in August 2004. Xcel Energy produced quarterly reports regarding the Leyden Gas Storage Facility. Petitioner provided a report dated October 17, 2005 which indicated that wells proximate to the subject were being plugged or monitored as observation wells.

Petitioner is requesting a 2008 actual value of $700.00 for the subject property.

Based on the market approach, Respondent presented an indicated value of $2,900,000.00 for the subject property. Respondent presented six comparable sales ranging in sales price from $0.40 to $1.19 per square foot and in size from 12.761 to 919 acres. All were considered to be "raw" land with no improvements at the time of sale. Sales 1, 2 and 3 were purchased for proposed industrial uses. The remaining three sales were purchased for mixed use development and were included for their proximity to the subject. Adjustments for exposure, location and ingress/egress were made; however, there was no resulting change in the indicated range. Respondent concluded to a value of $0.95 per square foot for a total value of $2,900,000.00, rounded.

As a test of reasonableness, Respondent provided four "raw" land sales that had contamination issues prior to purchase. The sales ranged in price from $1.49 to $1.88 per square foot and ranged in size from 7.55 to 19.495 acres.

Respondent provided documentation (Respondent's Exhibit B) showing that the property owner had applied for a grading permit in 2007. A letter dated October 18, 2007 from Jefferson County Planning and Zoning Division indicates that the property ownership would need to address grading, erosion control and drainage issues prior to the issuance of a grading permit. Quarterly reports indicated that Xcel Energy continued to monitor wells 33, 34 and 36 as observation wells as part of the "post closure monitor period" that ended December 31, 2007.

Respondent assigned an actual value of $823,500.00 to the subject property for tax year 2008.

Respondent presented sufficient probative evidence and testimony to prove that the tax year 2008 valuation of the subject property was correct.

The Colorado Constitution requires that property be assessed at its actual value based on appropriate consideration to the cost, market, and income approaches to value. Colo. Const. art. X § 3(1)(a). In *E.I. Du Pont v. Douglas County Board of Equalization,* 75 P.3d 1129, 1132 (Colo.App. 2003), the Court of Appeals held that the Board properly concluded that the costs to cure a property required by government remediation order should be deducted from the value of property as if clean to determine the actual value of property for ad valorum purposes. *See also Lawrence v. Bd. of Equalization,* 989 P.2d 232 (Colo.App. 1999) (upholding the Board's decision reducing the value of a contaminated well by cost to cure the contamination).

Petitioner provided no evidence supporting the requested value for the subject. The Board was convinced that while prior natural gas contamination in the area made drilling of water wells expensive, there was no compelling evidence that it was prohibitive of development. Petitioner provided no environmental report that directly indicated contamination issues on the subject as of the date of value, nor were specific mitigation costs provided to indicate an adjustment in value as of January 1, 2008. The Board was convinced that while the subject may have been monitored for natural gas at the date of value, there was no documentation presented by either party that indicated that the subject could not be developed due to contamination issues. While the Board was convinced that there might be economic costs to providing water to the site, mitigating erosion and detention issues, Petitioner provided no compelling evidence that development could not occur.

Respondent relied on land sales that carried similar industrial development potential and were similar in size to the subject. Consequently, the subject was appropriately valued as "raw" land, and not as individual platted sites. Most importantly, Respondent provided sufficient data to indicate that the subject's owner had applied for permits that would allow development of the subject; but, that the owner had not met their burden in the permit process by addressing the Planning and Zoning Divisions requirements prior to the date of value.

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 25th day of November 2009.

BOARD OF ASSESSMENT APPEALS

James R. Meurer

Sondra W. Mercier

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

Heather Flannery

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

51332