

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SPANOS CORPORATION,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 54170</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 3, 2010, Sondra W. Mercier and Louesa Maricle presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Michelle Bush, Esq. Petitioner is protesting the 2009 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**2500 West 23rd Avenue, Denver, Colorado
Denver County Schedule No. 02321-22-052-000**

The subject property is a 2.025-acre site on the west side of Interstate 25, south of 23rd Avenue. The site is located west of the Denver central business district in the Jefferson Park neighborhood. The subject parcel is a long, narrow site with frontage along I-25 and reportedly was part of the I-25 right-of-way for several decades. The north end of the site is described as fairly level, but a significant portion of the site has a steep slope, dropping approximately 30 to 40 feet from west to east through the middle of the site. A north/south retaining wall extends through the property.

Prior to acquisition of the subject site, Petitioner included the subject and adjacent parcels in an assembled site plan for the purpose of obtaining approval of a PUD for development of an upscale rental apartment property. The PUD was approved by the City and County of Denver in May 2007. After obtaining final approval of the PUD, Petitioner purchased the adjacent properties

that comprise the majority of the development plan area and demolished restaurant improvements on that land that also encroached onto the subject parcel.

The City and County of Denver vacated the subject property in July 2007 and ownership was to transfer to the adjacent land owner, Petitioner, pursuant to the Colorado Revised Statutes. However, Denver's sole ownership was disputed by the Colorado Department of Transportation (CDOT) and clear title was in question. Petitioner entered into negotiations with CDOT and in November 2007 paid CDOT \$500,000.00 to secure clear title to the subject site. CDOT has a slope easement that affects 39,896 square feet (45.2% of the subject site). Petitioner was the owner of the subject property on January 1, 2009, the effective date of value for tax year 2009.

Respondent assigned a value of \$1,543,700.00 for tax year 2009. Petitioner is requesting a value of \$500,000.00.

Petitioner contended Respondent valued the subject site as part of the larger assembled development site, but it should have been valued as a stand alone property. Therefore, it is inappropriate for Respondent to use the sales during the base period of the other parcels purchased by Petitioner for the planned development as comparables. Respondent has not made adequate adjustments for the slope easement, topography, and shape of the site which impact the development potential of the property. Petitioner contended that the \$500,000.00 paid by Petitioner to CDOT during the base period was an arm's-length sale of the subject property and is the best indication of value.

Respondent contended that the subject site is part of the approved PUD and must be valued accordingly. Respondent also contended that the CDOT transaction was not a sale of the subject. The recorded deed did not have a sale price or doc fee and a TD-1000 disclosure was not filed with Denver County. Rather it was a settlement agreement amount paid to obtain clear title by having CDOT withdraw any claim it might have had on the property. As such, it cannot be considered a market sale of the property.

Mr. Lex Economou, an employee of A.G. Spanos Corporation, testified as witness for Petitioner. Mr. Economou testified about the physical characteristics of the property including the limited access, steep topography, and impact of the slope easement. The witness described the larger assembled PUD site for the new apartment development planned. The witness testified that Petitioner always planned to include the subject site in the PUD to facilitate the density goal for the multifamily development and to enhance visibility of the larger property from I-25. The PUD shows that portions of the planned apartment building improvements would be built on the subject site. Though the subject facilitated the density goal, it was not required to achieve the desired density for the project. Petitioner met with CDOT representatives in August 2006 at which time, CDOT indicated it was the sole owner of the property and would be interested in selling the site for \$2,300,000.00 to \$2,400,000.00. Because of the ensuing dispute over title, discussions with CDOT stalled. Petitioner believed it would own the subject site after it was vacated by the city and transferred to the adjacent landowner in accordance with state statute, but Petitioner could not acquire a title commitment for the subject property after it was vacated. An agreement was finalized with CDOT in November 2007, within the 2009 base period. Mr. Economou testified that the subject site is not as valuable as the other parcels purchased for the development because of the

topography and slope easement issues.

Mr. Stanton E. Wagner of The Stratos Group testified as witness for Petitioner regarding his opinion of value for the subject property. Mr. Wagner testified that the subject is identified by its own county schedule number and until it is combined with the adjacent development parcels under a single schedule number, and until development actually begins, the subject site must be valued as a stand alone property. On its own, the subject site has little value because of the long, narrow configuration, limited access, topography, and the slope easement, which all adversely affect development potential of the site. Further, the subject site has little value because it was not required for Petitioner's project to achieve the desired density.

Petitioner's witness, Mr. Wagner, presented information about the CDOT transaction. The witness did not rely on comparable sales during the base period. Based on the CDOT transaction, Mr. Wagner concluded to a value for the subject property of \$500,000.00.

Respondent's witness, Mr. Walter Sorrentino, presented ten comparable sales ranging in size from 2,280 to 271,358 square feet. On a per square foot basis, the sales ranged in price from \$17.24 to \$50.17. The sales included Petitioner's purchases of the other parcels to be assembled for the apartment development. After adjustments, the sale prices ranged from \$17.24 to \$27.59 per square foot. The witness concluded to a value of \$20.00 per square foot and a total value for the subject for tax year 2009 of \$1,765,000.00, rounded.

Conclusions

The Board concurs that the topography and slope easement diminish utility of the site. The area affected by the utility easement was identified and can be used to estimate an adjustment to value.

The Board disagrees with Petitioner's position that the subject cannot be considered part of the assembled development site until construction begins and the individual sites are combined under a single county schedule number. Many developed properties are identified by multiple county schedule numbers and Petitioner failed to support the claim that multiple parcels are not "assembled" until construction begins. Both of Petitioner's witnesses testified that as a stand alone property the subject has little utility and there would be few potential buyers. The subject site was included in the owner's approved development plan before the subject property was acquired. Petitioner acquired the site to enhance the planned apartment development. The Board refers to *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1988) and concludes that the reasonable future use of the site is to assemble it with the adjacent property. The Board concurs with Respondent that Petitioner would be more likely to try to sell it as part of the larger assembled site.

The Board concludes that the evidence and testimony presented concerning the CDOT transaction supports Respondent's assertion that it does not represent an arm's-length sale of the fee simple interest in the real estate, so the Board gives it little weight in the valuation of the subject property.

The Board concludes that Petitioner failed to present sufficient probative evidence and testimony to prove that Respondent's valuation for the subject property for tax year 2009 was incorrect.

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 2nd day of September 2010.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Louesa Maricle

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

Heather Flannery

DATED and MAILED this 2nd day of September 2010.

BOARD OF ASSESSMENT APPEALS

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