

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>MARLIN J. &amp; MARLENE S. DORHOUT,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 54222</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 3, 2011, Louesa Maricle and Sondra W. Mercier presiding. Mr. Marlin J. Dorhout, Petitioner, appeared pro se on behalf of Petitioners. Respondent was represented by Charles T. Solomon, Esq. Petitioners are protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**2509-2511 S. Humboldt Street, Denver, Colorado  
Denver County Schedule No. 05265-16-025-000**

The subject property consists of a duplex built in 1954, with an average unit size of 670-square feet, on a 3,735 square foot lot. The subject is located in the 100-year flood plain and is part of a five-unit complex; however, only two units are part of this petition.

Petitioners are requesting a reduction in value of 25% calculated as \$151,200.00 for the subject property for tax year 2009. Respondent assigned a value of \$201,600.00 for the subject property for tax year 2009.

Mr. Dorhout contends that when the city started rezoning discussions, it created uncertainty in the market for a period of time that included the base period. The change in zoning went into effect on July 1, 2010, after the base period. Petitioner testified that the uncertainty of rezoning caused the value of the subject as a redevelopment site to decrease. Additionally, Mr. Dorhout contends that the location in the flood plain and the lack of garage space should be considered in the Respondent's valuation.

Petitioner is requesting a 2009 actual value of \$151,200.00 for the subject property.

Respondent presented a value of \$210,000.00 for the subject property based on the market approach.

Respondent's witness, Ms. April D. Roybal, Associate Real Property Appraiser with the City and County of Denver Assessment Division, presented four comparable duplex sales ranging in sale price from \$264,500.00 to \$354,000.00 equal to \$132,250.00 to \$177,000.00 on a per unit basis. After adjustments were made, the sales ranged from \$204,375.00 to \$224,825.00 indicating a range of \$102,188 to \$112,413.00 on a per unit basis. Ms. Roybal concluded to a total value of \$210,000.00 based on a per unit value of \$105,000.00.

Respondent did not make an adjustment for zoning as, like the subject, all of the comparables were non-conforming structures at the time of sale. Respondent's market approach did include downward adjustments to the comparables for low flood risk and inclusion of garage space.

Respondent assigned an actual value of \$201,600.00 to the subject property for tax year 2009.

The Board was convinced that the subject was being rented and used as a residential duplex as of the date of value. The Board was convinced that Petitioners' assertion that the subject should be valued as a redevelopment site was speculative and not supported by market data. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1988), the courts allowed properties to be valued under their highest and best use if evidence was presented that the use was a reasonable future use. The Court held that, "speculative future uses cannot be considered in determining present market value." *Id.* at 154. Petitioners presented insufficient evidence to support valuation of the subject as a redevelopment site or an adjustment to value for the uncertainty created by the process of change in zoning that was occurring during the base period.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2009. Respondent correctly applied the market approach to value, as specified in Section 39-1-103(5)(a), C.R.S., ". . . [t]he actual value of residential real property shall be determined solely by consideration of the market approach to appraisal." Respondent gave adequate consideration to the subject's location within a flood plain and lack of garage space, making downward adjustments to those sales that were superior to the subject.

## **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 10th day of August, 2011.

**BOARD OF ASSESSMENT APPEALS**

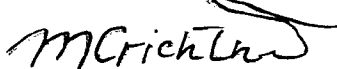


Louesa Maricle



Sondra W. Mercier

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



Milla Crichton

