

<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>BEAR CREEK DEVELOPMENT CORPORATION,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 54272</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 1, 2011, MaryKay Kelley and Debra A. Baumbach presiding. Petitioner was represented by Victor F. Boog, Esq. Respondent was represented by Max Taylor, Esq. Petitioners are protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**1700 Platt Street, Denver, Colorado  
Denver County Schedule No. R002284-06-018-000**

The subject property is a 26,253 square foot improved parking lot reduced to a net area of 17,210 square feet by a perpetual utility line easement located on the south side of the site. The subject is located on the west end of the South Platte River adjacent to a bike path and across from Commons Park and the skate park. The zoning for the subject property is Platte River Valley (PRV), which allows for multiple development options and lies within a 500-year FEMA flood zone.

Petitioner is requesting an actual value of \$360,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$1,576,200.00 for the subject property for tax year 2009 but is recommending a reduction to \$1,303,890.00.

Petitioner's witness presented the following indicators of value:

Market:	N/
Cost:	\$4 0,000.00
Income:	\$445,000.00

Petitioner's witness, Mr. John F. DeRungs, MAI, testified that he relied on the cost and income approaches to value the subject property. There were insufficient comparable sales to determine a supportable conclusion using the market approach. The subject's improvements were considered long-term use, and there was no evidence there was a change in use; therefore, the subject property's highest and best use was considered to be a parking lot. The income approach was given more weight in the valuation.

Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$460,000.00. Mr. DeRungs testified that he found no vacant land sales in the subject's market area during the time frame or extended time frame. He expanded his search area and time frame to include a nearby competing market area to find suitable sales. He was able to find six comparable vacant land sales with interim use in a PRV-zoned area for redevelopment located west of the subject's market area in Highlands.

The sales selected were similar in size, zoning, location and had not been developed. Sale 3, like the subject, was a parking lot. The other sales were acquired for assemblage or future development. None were located within a 500-year FEMA flood zone. The sales ranged in sale price from \$250,000.00 to \$1,114,700.00 and in land size from 4,885 to 27,878 square feet. After percentage adjustments were applied for size, the indicated range per square foot ranged from \$17.90 to \$40.94.

Mr. DeRungs placed most emphasis on Sales 3 and 5, concluding to a value of \$23.40 per square foot and a total rounded unencumbered value of \$614,300.00. The Denver Water Department (DWD) holds a perpetual utility easement encumbering the southernmost 60 feet of the subject property or 9,043 square feet. Mr. DeRungs considered the property rights acquired by DWD to be significant, at 80% of the full value of the land area, and the owner retains some rights that would be necessary for Petitioner to develop the property. The value within the easement area was calculated to be 20% of the fee value.

Mr. DeRungs concluded to a site value of \$445,000.00 and relied on the Marshall and Swift cost manual to determine the cost to construct a 63-space parking lot for an average rate of \$750.00 per space. Accrued depreciation of \$31,655.00 was applied, for an indicated value of \$460,000.00 rounded.

Petitioner's witness performed an income approach and concluded to a value of \$445,000.00. The parking lot had been vacant for approximately one year, and Petitioner relied on an annual contract rent of \$42,000.00 from the adjacent lot. Vacancy was estimated to be 3% and expenses at 2% for a net operating income of \$39,925.00. This amount was then capitalized at 9% resulting in a value of \$445,000.00.

Petitioner's witness, Mr. Jeff Bradley, President of Bear Creek Corporation, testified the subject property has increased in value by over 500% over the last assessment period. Respondent has overvalued the subject by changing the use of the property and using redevelopment sales to compare to the subject. The subject is a parking lot located along the South Platte River, converted from a private lot to a public lot in 2008 after a long term lease ended in 2007. The City and County of Denver owns the parking lot across the street, which is leased by Petitioner's former lessee. It was constructed after an off-ramp was demolished. The subject has been boxed in as a result of the off-ramp's absence, making it impossible to attract any new tenants.

The subject property suffers from an easement impacting the ability to utilize the site area. The ability to redevelop the site is limited in density due to the easement. There have been no offers to purchase the subject for an assemblage or for development of the property. There has been development along the Platte River but no activity on the east side where the subject is located.

Petitioner is requesting a 2009 actual value of \$360,000.00 for the subject property based on the income approach, the impact from the neighboring parking lot, lack of development in the immediate area, and the absence of development potential in the foreseeable future.

Respondent presented the following indicators of value:

Market:	\$1,304,000.00
Cost:	\$1,305,000.00
Income:	N/A

The subject property is located in the "Platte River Valley Zone District" allowing for diverse land uses promoting multiple redevelopment options. In the valuation process, highest and best use was considered due to the zoning allowances. It was determined that the highest and best use was for redevelopment and not for a parking lot.

Respondent's witness, Mr. Walter A. Sorrentino, Certified General Appraiser, presented an indicated value of \$1,304,000.00 using the market approach. Respondent presented Rebuttal Exhibit 2 citing five comparable sales from the Spanos acquisition used in a previous hearing for Dockets 54170 & 50582, before the Board of Assessment Appeals on June 3, 2010. The sales ranged in sale price from \$314,474.00 to 12,959,500.00 and in size from 4,651 to 143,086 square feet. After adjustments were made, the sales ranged from \$41.85 to \$67.92 per square foot.

All of the comparable sales selected were based on the ability for redevelopment. At the time of sales, all of the sales were vacant land, had not been developed yet, and were considered to have interim use like the subject. All sales carried PVR zoning and were considered to be good sales. Sale 6 is located in Commons Park, which was considered to be a slightly superior location.

Both Respondent and Petitioner utilized the sales from the Spanos acquisition because they reflect an easement issue similar to the subject's with diminished utility. Based on those sales, Mr. Sorrentino concluded that indicated adjustments for the sewer line encumbrance ranged from 10% to 51%.

Respondent presented a cost approach mirroring the market approach land values and attributing \$1,000 for the improvements, concluding to a value of \$1,305,000.00. The improvements were considered to be at the end of their life and minimal value was given.

Respondent assigned an actual value of \$1,303,890.00.00 to the subject property for tax year 2009.

Sufficient probative evidence and testimony was presented to prove that the subject property should be further reduced from Respondent's recommended value.

The Board affirms the highest and best use of the subject property is for redevelopment or possible sale for assemblage from neighboring sites. The Board refers to *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 153 (Colo. 1988) the court held:

[T]he reasonable future use of real property is an element of its fair market value under its technical definition as well as its common law interpretation in Colorado and elsewhere. Because there is no indication that the legislature intended to reject or distinguish those definitions here, we conclude that reasonable future use is relevant to a property's current market value for tax assessment purposes.

Further, the court explained that Colorado's tax statute "does not preclude consideration of future uses." The court contrasted "reasonable future use" with "speculative future uses," which the court said could not be considered in determining market value for property tax purposes.

The Board has determined that the redevelopment of the subject property is a "reasonable future use" and not a "speculative future use." The Board placed minimal weight on Petitioner's income and cost approaches and Respondent's cost approach. The Board gave most weight to the market approach and on the comparable sales used by Petitioner and Respondent of the Spanos acquisition.

The Board was convinced that the easement significantly diminishes the overall utility and marketability of the site. Both parties made adjustments for the impact of the easement. However, the Board was not convinced Respondent gave adequate consideration to the impact. The Spanos acquisition was part of an assemblage site plan for future development plans of an upscale apartment complex. The Board concluded that the subject, with its underground power line easement, had less utility than the Spanos complex, with its topography and sloping easement.

The Board placed the greatest weight on the Spanos sale located at 2100 Bryant Street, used by both parties. The Board concluded that the value of the 1,7210 square feet of unencumbered area to be \$689,000.00, rounded, and the value of the 9,043 square feet of encumbered easement area to be \$74,400.00, rounded, for a total value \$763,400.00.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$763,400.00.00.

**ORDER:**

Respondent is ordered to reduce the 2009 actual value of the subject property to \$763,400.00.00.

The Denver 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 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 \_\_/\_\_( day of March 2011.

**BOARD OF ASSESSMENT APPEALS**

MaryKay Kelley

MaryKay Kelley

Debra A Baumbach

Debra A. Baumbach

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

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Amy Bruins

