

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TECH REAL ESTATE HOLDINGS, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 60660</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 26, 2013, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Robert R. Duncan, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2009 and 2010.

The parties stipulated to the admission of Petitioner's Exhibits 1 through 14 and Respondent's Exhibits A, B, and C. The parties also stipulated to the admission of the expert witnesses.

The subject property is described as follows:

**7800 Moore Road, Littleton, Colorado
Douglas County Parcel No. 2353-050-00-001; Account No. R0001476**

The property is located west of U.S. Highway 85/Santa Fe Drive, south of Titan Road. The property consists of approximately 299.6 acres of vacant land and 20 buildings with a total of 43,303 square feet, according to the County Assessor's records. Of the total site, approximately 180 acres are zoned General Industrial and 119.6 acres are zoned Agricultural, according to Douglas County Planning Department estimates. The improvements are occupied by Buckley Powder, a company related to Petitioner. Historically, the improvements have been used for the manufacture, storage, and distribution of explosives. The topography of the property ranges from level to steeply sloping into ravines and drainage ways. No utilities, other than electricity, are available to the site. The property has a well that produces a small amount of water for non-potable use; potable water for the buildings must be trucked in. Moore Road is the only adjacent major roadway.

A May 2007 Environmental Covenant (Covenant) granted to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment affects 86.28 acres of the industrial zoned portion of the property. The acreage covered by the Covenant is polluted by chemicals used in the past manufacture of explosives. The Covenant prohibits residential and public uses, use of water and well construction, irrigated cultivation, and prohibits construction of surface water containment structures. Also, the property is within the Margin A - Water Supply Zone in Douglas County. In brief, the Margin A zone requires a renewable water supply for any proposed development within Margin A.

Petitioner is requesting a value of \$845,000 for tax years 2009 and 2010. Respondent has assigned a value of \$1,594,595.

Petitioner presented the following indicators of value:

Market:	\$845,000
Income:	Not used
Cost:	Not used

Petitioner contends the property has been over valued because Respondent has not adequately considered the Covenant, the lack of water, the impact of the property's location within the Margin A zone area, and topography issues, which all adversely affect the development potential of the land. Petitioner also claims that six of the buildings on the property have no value.

Petitioner's witness, Mr. E. Peter Elzi, Jr., of THK Associates, Inc. and a Certified General Appraiser in Colorado, presented an appraisal of the subject property. Mr. Elzi relied on a total land area of approximately 297.75 acres and a total area of the building improvements of approximately 45,939 square feet. The sources of those figures, which differ from those reported by Respondent, were not provided. The witness presented a market approach to value the land, including six comparable sales ranging in size from 106.00 to 385.26 acres and in price from \$2,077 to \$3,255 per acre. Mr. Elzi testified that Sales 1 and 5 were between related parties and although he was unable to confirm the sales with any of the parties to the transactions, he concluded that the relationships did not affect the prices paid. The witness made quantitative adjustments to the sales for location, useable area, access/visibility, conservation easements, where applicable, and for water restrictions imposed on the subject property because of its location with the Margin A zone. After adjustments were made, the sales indicated values of \$208 to \$2,767 per acre. The witness concluded to an initial value of \$1,365 per acre for the subject property. In Mr. Elzi's opinion, a clean-up of the polluted portion of the property to facilitate future development would be cost prohibitive given the fact that after clean-up, the property could still not be developed without securing a municipal water source, which is also not economical. For those reasons, the witness concluded that the polluted portion of the property has a value of one-half the value of the non-polluted property. An additional 50 percent downward adjustment was made to the initial indication of value per acre for the 86.28 acres of polluted land, resulting in a value for that portion of the property of \$680 per acre. The total value of the land was calculated by applying \$680 per acre to the 86.28 polluted acres, and \$1,365 per acre to the remaining 211.47 acres. The indicated value of the land, after rounding, is \$345,000. The witness did not appraise the 20 subject buildings; he accepted the assigned values for the building improvements set forth by the Assessor, except for Building Nos. 6, 8, 10, 11, 14, and 15, which

Petitioner claims have no value. Deducting the combined assigned value of \$44,688 for those six buildings, the witness concluded to a rounded value for the improvements of \$500,000 and a combined value for the property of \$845,000.

Respondent presented the following indicators of value:

Market (land value):	\$1,109,000
Income:	Not used
Cost (land and improvements):	\$1.655.000

Respondent claims the property has been correctly valued as dry range land, not development land, so the impact of being in the Margin A zone is irrelevant. Respondent contends that the Environmental Covenant does not prohibit the use of the polluted portion of the land for livestock grazing, which is a current activity on the property. Respondent further contends that Petitioner has relied on sales that were purchased because of their development potential, including two sales that were not arm's-length transactions and a sale that was part of a bulk land sale transaction. Respondent claims that the 50% adjustment made to the sales by Petitioner's witness for the water restrictions imposed by the subject's location with the Margin A zone area is based on Yuma County sales that occurred after the statutory base period.

Respondent's witness, Mr. Stephen M. Snyder, a commercial property appraiser with the Douglas County Assessor's Office and a Certified General Appraiser in Colorado, presented the market approach to value the land and the cost approach to value the land plus improvements. The contaminated portion of the property and lack of water limit uses for the property, so the witness relied on sales of dry range land for all of the land rather than separately estimate value for the industrial portion of the property. In doing so, the witness testified that he gave the advantage of the lower agriculture land value to the taxpayer. Mr. Snyder testified that the Covenant affecting the polluted portion of the property restricts use of water and well construction, but does not restrict the use of the land for cattle grazing. The land cannot be used to grow crops, but the land has not been valued as crop land. As further support, the witness presented a RCRA Facility Investigation Ground Water Summary Report for the subject property, dated October 2005. The report concluded that potable aquifers were not impacted as of the date of that report; existing impacts to shallow ground water impacts pose no risk to human receptors; and hypothetical future impacts to potable ground water resources are well below acceptable risk thresholds. The witness testified that the gullies on the property are passable by cattle, so do not restrict use of the land for dry land grazing. The Margin A district affecting the property imposes restrictions on residential development, but does not restrict dry land grazing use. Therefore, the witness concludes that the Covenant and the Margin A district do not negatively impact the value of the property as dry range land.

The witness testified that he did not find land sales that were similarly affected by the Margin A district or contamination for comparison to the subject. The witness presented four comparable sales of dry land agricultural properties ranging in size from 100 to 300 acres and in price from \$3,000 to \$4,750 per acre. Qualitative adjustments were considered for location, size, topography, shape, encumbrances or easements including development restrictions and conservation easements, zoning, and flood zone impact. After considering the qualitative adjustments, the witness concluded to a value for the subject land near the middle of the range of the sale prices at \$3,700 per acre.

Applying that to the land area of 299.6 acres resulted in a value for the land of \$1,109,000, rounded. The witness used a state-approved cost estimating service to derive a market-adjusted cost value for the building improvements of \$545,994, after deducting depreciation. Adding the depreciated cost of the improvements to the land value resulted in a total value of the subject property of \$1,655,000, rounded.

Respondent's witness concluded to a market value for the subject property of \$1,655,000. Respondent assigned a lower actual value of \$1,594,595 to the subject property for tax years 2009 and 2010.

Petitioner presented insufficient probative evidence and testimony to demonstrate that the tax year 2009 and 2010 valuation of the subject property was incorrect.

Petitioner's witness did not provide the sources of the land area and total building square footage he relied on. However, the Board concludes that the small discrepancies in the land area and total square footage of the improvements do not have a material effect on value.

The Board finds, based on testimony, that Petitioner's Sale 1 and Sale 5 both involved related parties and because Petitioner's witness was unable to confirm the impact, if any, on the prices paid with the parties to the transactions, little weight should be given to those sales. The Board finds that the sales relied on by Petitioner's witness to estimate a downward adjustment to the comparable sales for the water restrictions affecting the subject occurred after the statutory base period and should be excluded from consideration.

The Board is persuaded that Respondent did appropriately consider the Environmental Covenant affecting a portion of the property, the property's location within the Margin A zone area, and the property's lack of significant water. The Board finds that those characteristics limit the potential uses of the land. The Board finds, based on the evidence, that the grazing of livestock on the polluted portion of the land is not prohibited. The Board is persuaded for those reasons, that sales of dry range land are more comparable to the subject and require fewer adjustments than Petitioner's use of sales of properties that include water and have development potential, requiring multiple large adjustments. Regarding Petitioner's claim that six of the buildings on the property have no value, the Board finds that the Respondent's witness applied depreciation ranging from 74.8% to 92% to those buildings, similar to depreciation rates applied to other buildings of similar age at the property for which the Petitioner does not dispute the values. Petitioner's witness did not appraise the six buildings, but deducted the value of those buildings based on the Petitioner's opinion that they have no value. Regardless, the Board finds that even if the \$44,688 value used by Petitioner's witness were to be deducted from Respondent's appraised value of \$1,655,000, the resulting value of \$1,610,312 would be higher than the total assigned value of the property of \$1,594,595. Therefore, the Board concludes there would be no further impact on the assigned 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 26th day of March, 2013.



BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Louesa Maricle

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

Milla Crichton