

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RCL LAND COMPANY, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 63934</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 11, 2014, Debra A. Baumbach and Louesa Maricle presiding. Mr. Robert W. Lathrop appeared pro se on behalf of Petitioner. Respondent was represented by Mark Doherty, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**2301 N. Courtesy Road, Louisville, Colorado
Boulder County Account No. R0514227**

The subject property is a 79,279 square foot (1.82-acre) parcel of vacant land identified as Lot 2A in the Davidson Highline Replat in the northeast quadrant of Louisville. The subject property is zoned P-C/R, Planned Community - Commercial Residential. It is currently used for boat and recreational vehicle (RV) storage in conjunction with the business on the improved site adjacent to the subject to the east that is also owned by Petitioner. The improved site is not part of this petition. The vehicle storage area on the subject site is secured with a chain link fence. The uses in the vicinity include some commercial businesses and vacant commercial lots along Highway 42 to the east and recently developing single family and multifamily residential uses west of the highway frontage.

Petitioner is requesting an actual value of \$179,346 for the subject property for tax year 2013. Respondent assigned a value of \$277,477 for the property for 2013.

Petitioner contends Respondent did not adequately consider the depressed property values that still existed on the date of value as a result of the national recession. Respondent also did not

consider the physical constraints that adversely affect the development potential for the site. The lot has an irregular shape. Power and sewer line easements located along the south boundary and the Davidson Highline Ditch easement across the north part of the site significantly reduce the area of the lot that could be developed. The property currently has only limited access from Highway 42 across Lot 1A to the east, but as an individual property, it does not have highway frontage or access. Petitioner also testified he has been denied access to the site from Hecla Drive, a new residential grade street built adjacent to the west side of the property. Petitioner testified that RV storage use is a legal use obtained by Petitioner through special review by the city zoning authority. Petitioner presented market and income approaches to support his conclusion of a lower value.

Petitioner presented three comparable sales ranging in price from \$2.10 to \$2.93 per square foot and from 6.0 to 32.0 acres in size. The three sales are all in the immediate vicinity of the subject property and were assembled by a developer for single family and multifamily residential development. Petitioner testified that he totaled the purchase prices and acreage for the sales and calculated the average price per square foot of \$2.37. Using that figure per square foot, he calculated a value for the subject property by the market approach of \$187,891.

Petitioner also presented an income approach to derive a value of \$202,511 for the subject property based on a reconstructed boat/RV storage business operating statement for the fiscal year ending June 30, 2012, the date of value. The net income derived from the operating statement was capitalized at a 9.0% rate used in an income analysis presented by Respondent at the BOE level. Petitioner then averaged the market and income approach values and deducted \$15,855 from the value (based on his conclusion of \$0.20 per square foot) for the physical constraints affecting the property. After this adjustment, Petitioner concluded to a market value for the property of \$179,346.

Respondent presented Mr. Samuel M. Forsyth as witness. Mr. Forsyth is a Certified General Appraiser in Colorado and is employed by the Boulder County Assessor's Office. The witness testified that he considered the market, income and cost approaches to value, but developed only the market approach. In particular, he concluded that the income approach was not relevant because the highest and best use of the site is not for RV storage, which is a grandfathered use, not a use by right. The witness concluded that a reasonable future use for the site is for development of commercial improvements, most likely office, medical, or child care facility.

The witness presented three comparable sales ranging in price from \$3.00 to \$4.59 per square foot and in size from 79,339 to 117,641 square feet. The witness considered an adjustment for changing market conditions, but concluded that evidence did not support it. The witness made adjustments, if warranted, for the applicable mill levy for each property relative to the subject; condition of sale (atypical seller or buyer motivation), which in this case involved a site assemblage issue for Sale 3; and a variety of physical characteristics. The adjusted sale prices ranged from \$3.54 to \$4.13 per square foot. The witness testified he gave 60% weight to Sale 1, 35% to Sale 2, and 5% to Sale 3 and concluded to a value of \$4.10 per square foot and a total value of \$324,700 for the subject property.

Respondent's witness testified that even though Petitioner's comparable sales are located close to the subject, he would not use them because they are not platted sites, do not have utilities

extending into the sites from the adjacent roads, and are larger parcels that are part of an assemblage. The subject is platted and has utilities. The witness presented a rebuttal sale of an assemblage of four small parcels planned for residential development. The combined land area was 116,821 square feet and the sale price paid was equivalent to \$7.69 per square foot. The date of the contract for the sale was within the base period, but the sale did not close until after the base period. The witness did not use this sale because of the intended use for residential development, which is inconsistent with the witness's conclusion of commercial use for the subject, and because of the gap in time from the contract to the sale. Even if it had been used, this sale would have indicated an even higher value for the subject site.

The value presented by Respondent's witness of \$324,700 is higher than the assigned value for the property. Therefore, Respondent's actual value of \$277,477 assigned to the subject property for tax year 2013 is the value presented for this hearing.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

The Board finds that Petitioner did not make adjustments to the comparable sales used for differences between those properties and the subject site, including, but not limited to, the significantly large size of each of the properties, highway access, if applicable, and the impact, if any, the assemblage of these properties by one developer might have had on the purchase prices. In concluding that Petitioner has not used appropriate methodology to derive a value for the property, the Board cites the following:

"Direct sales comparisons, with sales adjustments determined from market analysis, will be made." *Assessor's Reference Library* Volume 3 at page 1.15.

The Board is not persuaded that Petitioner's income approach is reliable for the site as a stand alone property because it essentially allocates value generated by Petitioner's business on the adjacent improved property. The Board was persuaded by evidence presented by Respondent that the subject site will have a curb cut and access from Hecla Drive by right, although the type of access to be allowed might not be determined until a development plan for the site is submitted to the planning department for approval.

The Board finds that despite evidence presented by both parties indicating that the majority of the new development in the vicinity consists of various types of residential uses, Respondent did not provide an adequate explanation of why he did not consider residential use for the site when selecting comparable sales. The zoning permits residential use and as a stand alone site, it does not have commercial frontage or access from an arterial. Respondent's use of Sales 2 and 3, which were industrial/manufacturing sites, is inconsistent with the witness's conclusion that the highest and best use of the site is for other commercial uses, most likely office, medical, or child care facility. Also, the witness testified that Sales 2 and 3 were not good comparables for the subject, but similar sales were difficult to find. Despite that, the witness gave a combined 40% weighting to those two sales in his conclusion of value for the subject property. The Board is not persuaded by Respondent's claim that the site is more valuable than Petitioner's sales because it is platted and has utilities. Respondent

testified that utilities exist to the boundaries of those sales and any utility lines that might be present on the subject site are not likely to contribute much value considering Respondent's opinion that the reasonable future use for the site is for development of a different use than currently exists. With regard to Respondent's rebuttal sale and the witness testimony that it supports a higher value for the subject, the Board finds that the witness did not provide evidence about whether or not the buyer paid a premium for the smaller parcels in order to assemble a development site for the planned use, so there is no evidence to support that claim.

The Board concludes that without market adjustments, Petitioner's sales do not provide a supportable indication of a lower value for the property. The Board concludes that two of the sales relied on by Respondent are not comparable to the subject property and that the remaining sale by itself is not adequate to support the witness's higher indication of value. The Board concludes that a reasonable market value for the property is between the values presented by Petitioner and Respondent at hearing. Therefore, the Board has relied on the \$277,477 value assigned to the property by the BOE.

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-nine 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-nine 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 13th day of October, 2014.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Louesa Maricle

Louesa Maricle

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

Milla Lishchik
Milla Lishchik

