

<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>LINDA G. PRETTNER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION</b></p>	<p><b>Docket No.: 67715</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 28, 2016, Debra A. Baumbach and James R. Meurer presiding. Petitioner appeared *pro se*. Respondent was represented by Charles T. Solomon, Esq. and Maral Shoaie, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**4502 Utica Street, Denver, Colorado  
Denver County Schedule No. 02192-01-012-00**

Petitioner, Ms. Linda Prettner, presented three subpoenas to the Board requesting appearances at the hearing by Mr. Charles T. Solomon, Assistant City Attorney, Mr. Rick Armstrong with the Denver County Assessor’s Office, and Ms. Cynthia Coffman, Attorney General for the State of Colorado. The Board concluded that these subpoenas were not valid given they lacked the proper execution and approval in accordance with Rule 10 of the Board of Assessment Appeals’ Procedures of Practice and Review. Petitioner agreed to proceed without the requested subpoenas.

The subject is a one-story, brick, single family detached house located in the redeveloping Berkeley neighborhood of the City and County of Denver. The structure was constructed in 1906 and contains 814 square feet of above-grade living area. There is a 224 square foot basement and a 310 square foot garage. The lot is a corner parcel, site size is 6,250 square feet, and zoning is U-TU-C (maximum of two residential units) via the Denver Zoning Code. The subject was purchased by Petitioner in 2001 for \$171,900. Petitioner and Respondent agree that the property is in poor to fair condition.

Respondent assigned an actual value of \$250,000 for tax year 2015, which is supported by an appraised value of \$325,000. Petitioner is requesting a value of \$135,000. (See Petitioner's Exhibit 17, page 2).

The significant difference between Petitioner's and Respondent's values resulted from Respondent's appraising the property as vacant land only, arguing that the value of the lot significantly exceeds the ability of the improvements to economically contribute to value. Petitioner based her value on the existing land and improvements (e.g. single family house).

Petitioner testified that the property was foreclosed upon in 2014 and argued malfeasance on behalf of the lenders, attorneys, developers, public agencies and officials involved. Petitioner also argued that the multi-family zoning of the property constituted an illegal taking by Denver because it supported the demolition of existing properties in favor of new homes with higher density, and higher values. Petitioner stated that this new construction was not compatible with the existing character of the Berkeley neighborhood.

Petitioner further argued that the market (sale comparison) approach used by Respondent was flawed in that it compared the subject property to "scraped and new built" properties in the Berkeley neighborhood, rather than the multitude of existing home foreclosures that occurred in the market.

In terms of Petitioner's concluded value, Ms. Prettner provided a listing of 13 foreclosures in the Berkeley Neighborhood ranging in note amounts from \$58,000 to \$166,400. All of these foreclosures appeared to be improved properties. However, no information relative to the physical and economic characteristics of the properties was provided. Petitioner averaged the prices of these 13 foreclosures to arrive at her concluded value for the subject of \$135,000, stating that this amount best reflected the market value for the subject.

Relative to the valuation provided by the County, Respondent's witness, Ms. Kimberly Lust, an Ad Valorem Appraiser with the Denver County Assessor's Office, developed a market approach, and presented four recent comparable sales to support her opinion of value. All of the sales included vertical improvements. However, these improvements were demolished rapidly after sale, and the vacant lots were improved with new row-house style structures. It is important to note that the prices paid for these four comparables reflected *land value* only. All of the sales were located in the same general area as the subject, with sale prices ranging from \$45.37 to \$59.87 per square foot. No adjustments were needed for the comparables given their similarity to the subject. With most weight on Sales No. 1 and 2, given their recent sale date, proximity to the subject, identical zoning, similarity in size, and considering her opinion of the highest and best use of the subject, Ms. Lust concluded to a value of \$52.00 per square foot or \$325,000 for the lot.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

Colorado case law requires that “[Petitioner] must prove that the assessor’s valuation is incorrect by a preponderance of the evidence.” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration, the Board concludes the following:

1. The Board has no jurisdiction over claims of malfeasance relative to any foreclosure or zoning (use) issues associated with the subject property.
2. Under Colorado law, valuation for ad valorem property taxation should be based on a property’s highest and best use. *Board of Assessment Appeals, et. al v. Colo. Arlberg Club*, 762 P.2d 146 (Colo. 1988). A property’s “highest and best use” is “the use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, that results in highest and best value.” *Id.* at 152.
3. Moreover, “[i]n the market, the current value of a property is not based on historical prices or cost of creation; it is based on what market participants perceive to be the future benefits of acquisition.” *Id.* The pertinent definition of market value is as follows:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

*See Assessor’s Reference Library, Vol. 3, page 2.3 (emphasis added).*

4. Based on a review of the testimony and exhibits, specifically the highest and best use discussion relative to the changing character of the neighborhood provided by Ms. Lust, the Board concurs with Respondent that the market value of the property is best represented by the value of the lot. The Board is convinced that the use of the subject as a vacant parcel is physically possible, appropriately supported and financially feasible. Moreover, the Board found persuasive Ms. Lust’s analysis which utilized four recent sales within the subject’s immediate neighborhood of properties that are very comparable to the subject in terms of size, zoning, topography and infrastructure. All four properties were torn down immediately after purchase and improved with new homes. Sufficient evidence was presented before the Board to support the conclusion that the sale of the subject property as a vacant parcel for purposes of redevelopment would result in the highest and best value for the lot.
5. Petitioner presented insufficient information to convince the Board that the foreclosures that Petitioner used in arriving to her value conclusion were comparable to the subject property. Further, the Board was not convinced that the “note” amounts of the 13 foreclosures provided by Petitioner represent market sales prices, rather than reduced or inflated prices resulting from the terms of the foreclosures.

6. Based on a review of the exhibits and testimony, the Board concludes that Respondent's comparable sales provide sound support for the conclusion of market value for the subject property. The sales used by Respondent were all in similar locations, and were representative of the market during the required statutory period.

**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 12th day of January, 2017.

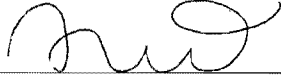
**BOARD OF ASSESSMENT APPEALS**



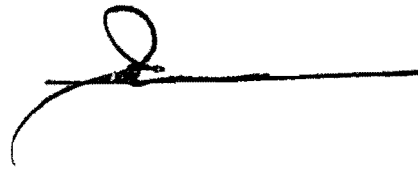
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Debra A. Baumbach

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



Milla Lishchuk



James R. Meurer

