

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69212
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Petitioner:	
KATHERINE A. DINES AND DAVID H. MILLER,	
v.	
Respondent:	
DENVER COUNTY BOARD OF COMMISSIONERS.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on February 27, 2017, Louesa Maricle and MaryKay Kelley presiding. David H. Miller appeared *pro se* on behalf of Petitioners. Respondent was represented by Noah Cecil, Esq. Petitioners are protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**2595 East Cedar Avenue, Denver, Colorado
Denver County Schedule No. 05124-08-017-000**

The subject is a 2,032 square foot ranch with basement and garage built in 1984. It sits on the rear half of the 19,939 square foot rectangular-shaped lot (approximately one-half acre); the front half of the lot consists of mature landscaping and gardens.

Respondent assigned an actual value of \$1,068,500 for tax year 2015, which is supported by an appraised value of \$1,100,000. Petitioners are requesting a value of \$825,000.

Mr. Miller, Petitioner, discussed Petitioners' 2015 purchase of the subject. The property was purchased post-base period with a restrictive covenant prohibiting both subdivision of the lot and a building footprint larger than 5,500 square feet.

Mr. Miller described the subject parcel as "bucolic." The subject's prior owner, conscious of residential development in the neighborhood, was committed to retention of the parcel's garden as a nature conservancy and, thus, added the restrictive addendums to the warranty deed.

Mr. Miller testified that the subject is located within a well-established neighborhood that undergoes redevelopment, demolition and new construction. He noted that the property adjacent to the subject has been redeveloped into three improved lots and that surrounding areas have been and continue to be similarly redeveloped. He considered the subject's highest and best use to be subdivision and re-development and argued that a negative adjustment should have been made because subdivision and redevelopment of the subject was not legally permissible.

Mr. Miller argued that the value of the subject parcel was negatively impacted by the inability to subdivide and redevelop. Based, in part, on a current listing of a property next door, he estimated the value of the subject property to be \$825,000.

Respondent's witness, Diana L. Chilcutt, Certified Residential Appraiser with the Denver County Assessor's Office, presented a market approach consisting of three comparable sales. She concluded to an indicated value of \$1,100,000. The sales were selected primarily for their restrictions on subdivision.

Sale One (\$850,000 sale price) was selected for its similarity in age and improvement size to the subject. Due to the smaller size of the lot (8,620 square feet), there is no opportunity for subdivision. Its adjusted sale price was \$1,079,200.

Sale Two (\$855,000 sale price) was selected for its similar lot size (.4 acre) and zoning restrictions prohibiting subdivision. Its adjusted sale price was \$1,013,600.

Sale Three (\$1,400,000 sale price) was selected for its similarity in lot size (.4 acre) and for subdivision restrictions within its neighborhood, Belcaro Park.

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

The Board acknowledges Petitioners' argument concerning subject's highest and best use, which "requires the future use to be physically possible, legally permissible, financial feasible, and maximally productive" (ARL, Vol. 3, pg 2.4). The Board is persuaded that based on the subject's warranty deed addendum, subdivision and redevelopment of the subject is not legally permissible.

The Board finds that Petitioners' inability to subdivide and redevelop does not warrant a negative adjustment from the value determined by Respondent. Respondent's witness presented comparable sales that are similarly unable to be subdivided and redeveloped. The Board is convinced that a viable market exists for improved properties of similar acreage, and the subject, therefore, should be valued "as is" without a negative influence. Also, the Board recognizes that, if the subdivision and redevelopment of the subject were permissible, the subject's value on sale would potentially be higher.

The Board is persuaded that the subject property is marketable "as is," that is as an improved one-half acre site. Respondent's comparable sales address the subject's inability to subdivide and redevelop. Respondent's appraisal is supportable and convincing.

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 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-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 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.

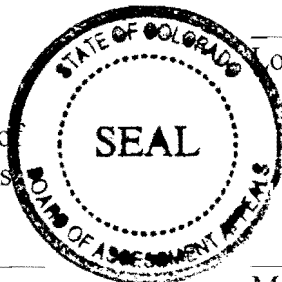
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 23rd day of March, 2017.

BOARD OF ASSESSMENT APPEALS

[Handwritten Signature]

Yousa Maricle



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

[Handwritten Signature]

Milla Lishchuk

[Handwritten Signature]

MaryKay Kelley