BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.71967
Petitioner: **LOUISVILLE MILL SITE LLC,** v. **BOULDER COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 23, 2018, MaryKay Kelley and Cherice Kjosness presiding. Petitioner was represented by James C. Tienken, Esq. Respondent was represented by Jasmine Rodenburg, Esq. and Michael Koertje, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Dockets 71967 and 73842 were consolidated for purposes of the hearing.

Subject property is described as follows:

520 & 540 County Road, Louisville
Boulder County Schedule Nos: R0607875 & R0607873

The subject is comprised of two parcels, Lot 2 and Outlot A of the Louisville Mill Site Redevelopment Subdivision. Lot 2, a 9,122 square foot land parcel, contains a grain elevator built in 1905 and three parking spaces. The grain elevator has been designated as a historic structure and has been structurally stabilized but is essentially a shell building of 4,094 square feet. Outlot A, 6,841 square feet, is vacant and currently has only grass and trees on it. The Planned Unit Development (PUD) plat allows for 24 parking spaces to be placed on this parcel, but the current use is as a park and view preservation for the grain elevator.

This is a unique property in that it was originally purchased by the City of Louisville in order to prevent the demolition of the old grain elevator. The City desired a historical property designation to protect the structure but wanted the balance of the property (Lot 3, subject of Docket 73842) to be privately owned and to contribute to the downtown Louisville economy.

Evidence was presented by both sides regarding the transfer to the City, the two requests for proposal offers, and the final agreement of Petitioner with the City, including a purchase price of $200,000 and grant funds of $500,000 to the buyer.

Respondent assigned a value of $222,200 for Lot 2 but is recommending a reduction to $138,000. Respondent assigned a value of $82,100 for Outlot A. Petitioner is requesting a total value of $200,000 for the three parcels in the subdivision: Lot 2 and Outlot A in Docket No. 71967 (subject docket) and Lot 3 in Docket No. 73842. Petitioner did not allocate values for the three.

Petitioner's witness, Mr. Erik Hartronft, testified that he and his partner, Mr. Randall Caranci, are developing the three parcels (Lots 3 and 2 and Outlot A) as an "economic unit". Per Mr. Hartronft, Lot 2 and Outlot A are actually liabilities for the ownership. The historical designation of Lot 2 requires the owner to maintain the grain elevator building at a certain level in perpetuity. A conservation easement, a requirement of the City, also limits the ability to economically develop Lot 2. The Outlot A parcel is designated as a "no build" parcel so that the visibility of the grain elevator is maintained. The plat allows parking spaces to be developed on this parcel. However, the parking requirement is satisfied through an agreement with the Burlington Northern Railroad for parking on the right-of-way on an abandoned line. Therefore, the parking spaces on Outlot A will not be developed. Testimony of two witnesses from City of Louisville was that Outlot A must be maintained as part of the common area of the Planned Unit Development. The only way for Petitioner to have an economically viable commercial property is to redevelop the third parcel (Lot 3, subject of Docket 73842) to its highest and best use in order to support the two subject parcels.

Petitioner presented a pro forma income approach for the "economic unit" that includes Lots 3 and 2 and Outlot A (Exhibit 16). Mr. Hartronft testified that this approach was originally developed prior to the purchase to test the viability of the project with the covenants and restrictions the City wanted to put in place. This pro forma was the basis for the offer to the City to purchase the property for $200,000. Concluding to a value of $207,754, the pro forma used a triple net rental rate of $10.18 per square foot based on actual rent obtained from two short term tenants. The expense rate was $5.37 per square foot. The costs of the maintenance of the common area and the historical grain elevator were deducted as legitimate expenses to the property. The net operating income was capitalized at 8% and also at 9% as the preferred rates of return. Under the 8% capitalization rate, the indicated value of the economic unit was $207,754. In cross examination, Mr. Hartronft testified that he did not do any market research to determine any of the data in the proforma. He used data that his experience indicated was reasonable for this particular property.

Respondent's Exhibit A is the appraisal for Lot 2. Mr. Harris presented four vacant site sales based on a highest and best use of vacant land held for development. He testified that there were no sales of comparable improved properties in the 5-year extended statutory data gathering period. He considered the grain elevator to be "salvage value" even after the re-stabilization procedures done by Petitioner. Therefore, he valued the land and added a nominal value of $1,000 for the building. Petitioner contends this is not a proper appraisal method. The sales presented were not reasonable substitutes in the market for the subject land because none were under conservation easements or had historical structures with maintenance liabilities to the owner.

Respondent's Exhibit B is the appraisal for Outlot A. Mr. Harris presented three sales of vacant sites with interim use or future use as parking lots. Mr. Harris testified he chose these sales based on the Planned Unit Development filing that indicated this parcel could have parking spaces on it. Based on the Supreme Court case, *BAA v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1988), he valued the lot based on "reasonable future use." Petitioner contends these sales are not comparable to the subject property in that they are all buildable sites while the subject property is under a "no build" restriction as shown on the recorded plat of the subdivision. Mr. Harris testified that his sales had no restrictions for further development. Petitioner believes that the *Arlberg* case is not relevant, as a parking lot is not a "reasonable future use" based on the evidence of the plat and the testimony of the City of Louisville witnesses.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board agrees with Petitioner that the sales used by Mr. Harris in the market approaches to value are not appropriate. The valuation of Lot 2 as a vacant lot with a salvage value building does not reflect the subject property characteristics or its historical designation. The Board finds that the Supreme Court case, *Arlberg*, is not relevant for Lot 2, because the covenants and restrictions placed on this property as of January 1, 2017 clearly prohibit the demolition of the structure; there is no feasible alternate use. The Board also finds the reasonable future use argument not relevant for Outlot A. The official plat, duly executed, clearly shows it as a "no build" area. In addition, the testimony of the Mayor of Louisville and the Louisville Economic Director confirm that, once the agreement with Burlington and Northern Railroad for parking on the railroad right-of-way was finalized, the City would not have allowed any parking spaces to be placed on Outlot A.

Section 39-5-104 C.R.S., allows the county assessor to value multiple parcels as one if they are owned by the same person or entity. The Board believes this is the only proper way to value this unique property. Petitioner is correct in that the covenants and restrictions in place would make it very difficult to sell the parcels separately. In addition, the liabilities in place, with little possibility of economic return, would make them difficult to market.

The Board believes that the bulk of the value should be placed on Lot 3 (Docket 73842). Lot 3 is also under appeal to the Board and should be considered in conjunction with these properties.

The Board concludes that the 2017 actual value of the subject property should be reduced to $1,000 for Lot 2 and $1,000 for Outlot A. These values reflect current use for the historically-designated parcel (grain elevator) and its adjoining parcel (park and view corridor) and represent minimal value for each. Neither parcel is available for any other use.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to $1,000 for each of the parcels (Lot 2 and Outlot A) for a total of $2,000.

The Boulder 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-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 27th day of June, 2018.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

Cherice Kjosness

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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