

| | |
|--|---------------------------------|
| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DONCO INVESTMENTS LLC,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 73847</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on December 18, 2018, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Richard F. Rodriquez, Esq. Respondent was represented by Casie Stokes, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The Board accepted Respondent’s Exhibits A and B and Petitioner’s Exhibits 2, 3, 5, 6, 7 and 8.

Subject properties are described as follows:

**1730 South Fordham Street
Lot 8
Longmont Colorado 80503
Boulder County ID No. R0146016**

**1660 South Fordham Street
Lot 9
Longmont Colorado 80503
Boulder County ID No. R0146017**

The subject properties consist of two lots located within the Longmont Business Center Final Plat. Both lots face South Fordham Street to the west. Lot 8, containing 6.14 acres, abuts Dry Creek Drive along its southern border and Lot 9, containing 6.99 acres, abuts Lot 10 to the north. Lot 10 is improved with a power station owned by the Platte River Power Authority that serves this portion of

Longmont. Both Lots 8 and 9 are situated to the west of Lot 1, a multi-tenant high tech campus. Both of the subject lots are improved with some curb and gutter. Water and sewer utilities are stubbed to the subject lots with drainage in place.

Evidence Presented to the Board

Petitioner presented the following indicators of value:

| | Lot 8 |
|---------|-------------|
| Market: | \$896,000 |
| Cost: | Not Applied |
| Income: | Not Applied |

| | Lot 9 |
|---------|-------------|
| Market: | \$928,500 |
| Cost: | Not Applied |
| Income: | Not Applied |

Petitioner's witness E. Peter Elizi Jr., a Certified General Appraiser, presented a market approach containing four comparable sales that were used to value both lots. The comparable sales ranged in sale price from \$562,000 to \$1,495,061 and in size from 140,948 (per Petitioner's Exhibit 3 or 140,980 per Petitioner's Exhibit 2) to 575,471 square feet. After adjustments were made, the sales ranged from \$2.02 to \$4.08 per square foot for Lot 8 and from \$1.91 to \$3.68 per square foot for Lot 9.

Mr. Eilzi adjusted the comparable sales for location, access, visibility and infrastructure. Adjustments ranged from a negative 10% to a negative 55%. The witness applied a weighted average with 60% of the weight to Sale No. 1, 20% to Sale No. 4 and 10% to Sales No. 2 and 3.

The witness concluded to a unit value of \$3.35 per square foot for Lot 8 to derive a value opinion of \$896,000 (rounded). The witness concluded to a unit value of \$3.05 per square foot for Lot 9 to derive a value opinion of \$928,500 (rounded).

Respondent presented the following indicators of value:

| | Lot 8 |
|---------|-------------|
| Market: | \$2,139,700 |
| Cost: | Not Applied |
| Income: | Not Applied |

| | Lot 9 |
|---------|-------------|
| Market: | \$2,435,900 |
| Cost: | Not Applied |
| Income: | Not Applied |

Respondent's witness Sara M. Thorpe, a Certified General Appraiser, presented a sales comparison approach containing five comparable sales that were used to value both lots. The comparables ranged in sale price from \$1,151,400 to \$2,500,000 and in size from 95,113 to 171,193 square feet. After adjustments were made, the sales ranged in unit value from \$8.17 to \$14.98 per square foot.

Ms. Thorpe adjusted the comparable sales for market conditions and land area. Sale No. 4 was adjusted upward for a transaction date 19 months previous to the valuation date. Sale No. 3 was adjusted on a qualitative basis as superior due to economies of scale. No other adjustments were applied. Sales No. 1, No. 2 and No. 3 were given the greatest weight as they were located in the same subdivision as the subject. Of these, Sales No. 1 and No. 2 were weighted more heavily.

The witness concluded to a unit value of \$8.00 per square foot for both Lot 8 and Lot 9 to derive a value opinion of \$2,139,700 and \$2,435,900, respectively.

Respondent assigned a total actual value of \$3,596,000 to the subject property for tax year 2017.

The Board's Findings

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a *de novo* BAA proceeding. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board was not convinced by the adjustments made to the comparable sales by Petitioner's appraiser. All Petitioner's comparable sales were adjusted downward thus failing to bracket the value opinion. In addition, Petitioner's witness adjusted one of his sales downward by 50% to 55% and then gave that comparable 60% of the weight in his reconciliation process. Respondent's appraiser successfully convinced the Board that two of Petitioner's sales were not reasonable by illustrating their different zoning, highest and best use and lack of necessary entitlements. The Board also found Respondent's valuation, with three of five sales from the subject subdivision, to be more compelling than the more distant comparables relied upon by Petitioner.

Petitioner's appraiser failed to convince the Board of the appropriateness for the magnitude of adjustments for construction of a retaining wall and proximity of the subject lots to the power station owned by the Platte River Power Authority. Petitioner's appraiser cited no authority for the necessity of the retaining wall and, in the Board's opinion, incorrectly compared the negative influence of power lines to the necessity of large nearby high tech business users for reliable power. Petitioner's Exhibit 7 also illustrates that no power lines are in place over the subject lots but, instead, the power lines are extended in a northerly direction, away from the subject lots.

The Board does not find credible Petitioner's position that visibility to Highway 119 deserves adjustment for location within a business park as compared to visibility for retail users. The Board also does not find compelling Petitioner's appraiser's testimony regarding the minimal cost to obtaining approvals for platting and entitlements.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

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 17th day of January, 2019.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Gregg Near

Gregg Near

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

Milla Lishchuk

Milla Lishchuk

