

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79045
Petitioner: LSC VENTURES LLC, v. Respondent: ADAMS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on September 28, 2021, Samuel M. Forsyth and Diane M. DeVries presiding. Petitioner appeared through property owner Srinivas Cheela. Respondent was represented by Meredith Van Horn, Esq. Assistant County Attorney with Adams County. Petitioner protested the actual value of the subject property for tax year 2019.

EXHIBITS

The Board admitted into evidence Respondent’s Exhibit B. The Board admitted Adams County appraiser Ms. Valerie Ferguson as an expert witness. Respondent also called as a witness Mr. Jay Ruchti, Senior Planner with the City of Thornton.

DESCRIPTION OF THE SUBJECT PROPERTY

3894 E 104th Ave., Thornton
County Schedule No.: R00192463

The subject property is a vacant land parcel. The parcel is owned by LSC Ventures LLC. The subject is a 2.08 acre +/- site. It is located in a shopping center anchored by a Safeway grocery store. The Safeway store lies on the west border of the subject and several “in line” stores lie on the east side. On the north perimeter is a parking lot for the Safeway store. The subject site is the last remaining unimproved site of the development, which was platted approximately 20 years ago. The subject lies within the Community Retail District. The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

Assessor and CBOE's Assigned Value: \$ 680,138
Petitioner's Requested Value: \$ 200,000

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id.* However, in this appeal, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S. (2019).

APPLICABLE LAW

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S. (2019), which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

The cost approach involves estimating the cost of replacing the improvements to the property, less accrued depreciation. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo. 1990). Colorado law mandates that depreciation in the valuation of a taxpayer's personal business property be allowed annually from the base year to the date of assessment. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

The income approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Sonnenberg*, 797

P.2d at 31. It generally involves calculating the income stream (rent) the property is capable of generating, capitalized to value at a rate typical within the relevant market. *Id.*

FINDINGS AND CONCLUSIONS

The Board heard the testimony of property owner Srinivas Cheela. The Petitioner purchased the subject site in a transaction in April 2019, after the tax year 2019 data collection period ending June 30, 2018. The Board gave this transaction no consideration, as the Board is prohibited by law from considering market data from after June 30, 2018 in assessing the value of the subject property for tax year 2019. §§ 39-1-104(10.2)(d), (12.2), C.R.S.; *Padre Resort, Inc. v. Jefferson County Bd. of Equalization*, 30 P.3d 813 (Colo. App. 2001). Mr. Cheela presented testimony that the subject is burdened by easements along the perimeter and a drainage/utility easement across the subject property. Mr. Cheela believes that the easements severely diminish ability to development improvements on the subject because the easements restrict the building envelope size. He also testified that there are highly prohibitive use restrictions in the development's covenants that greatly diminish the appeal of the subject property to the market. Mr. Cheela asserted that these restrictions are neither accurately reflected in the value established by the CBOE nor in the value of the Respondent's expert's appraisal. Mr. Cheela did not provide an appraisal, did not provide sales for the Board's review, and provided no testimony of appraisal valuation supporting his concerns. Petitioner asked that the Board reduce the value of \$200,000.

The Respondent offered as an expert witness Valerie Ferguson. Ms. Ferguson holds a Colorado Certified Residential Appraisal License. Ms. Ferguson's job title is Land Appraiser III in the Adams County Assessor's Office. Mr. Ferguson presented an Appraisal Report for the subject property, which the Board admitted as Exhibit B. The appraisal was an opinion of the retrospective Fee Simple market value of the subject property as of June 30, 2018. Ms. Ferguson's appraisal was prepared in compliance with the Uniform Standards of Professional Appraisal Practice. Zoning allowed a variety of uses as summarized in Respondent's Exhibit B, pages 65-67. The development covenants prohibit some uses, most notably any use that is currently in operation in the subject development. Ms. Ferguson developed a highest and best use analysis of the subject, concluding that the highest and best use is for retail development. The Board concurs with this determination and finds this conclusion well supported. Ms. Ferguson's appraisal noted the subject's proximity and "direct access" to light rail.

Ms. Ferguson considered all three approaches to value. Only a value based on the sales comparison approach was developed. Ms. Ferguson identified five comparable vacant land sales. The size of the sites of the comparables ranged from 35,940 square feet to 145,578 square feet, resulting in an average size of 71,568 square feet. Unadjusted sale prices per square foot ranged from \$8.37 to \$10.96 per square foot, averaging \$9.53 per square foot. All of the comparables were suitable for commercial development. Ms. Ferguson applied qualitative adjustments to the comparables primarily for size differential and proximity to light rail. Concluding that the comparable sales were superior overall to the subject, Ms. Ferguson reconciled to a value of \$9.00 per square foot for the subject. Based on this, Ms. Ferguson concluded to a value of \$816,200.

The Respondent offered as a fact witness Jay Ruchti, Senior Planner with the City of Thornton. Mr. Ruchti testified that he was aware of the subject property and the subject

development. Based on this, he testified that the zoning of the area allowed a broad spectrum of uses including approximately 30 different retail uses. Mr. Ruchti testified that the restrictions contained in the development covenant were not unusually restrictive and did not prohibit all retail development. Mr. Ruchti was aware that a retail use that was the same as an existing retail use in the subject development was prohibited. Mr. Ruchti also acknowledged the drainage/utility easement in the center of the subject site. Mr. Ruchti testified that in his experience easements like this did not create significant roadblocks to development, and that easements like the one on the subject could either be used for parking or could be relocated to another part of the site.

On April 7, 2021, the Board issued an Interim Agency Order on this matter subsequent to a hearing on September 8, 2020. In this Order, the Board found that neither side provided substantive evidence of the value of the subject property. The Board acknowledged easement and use restrictions testified to by Mr. Cheela as having potential impact on value. At the time of the September 8, 2020 hearing the Petitioner provided no comparable sales or market data measuring the impact of the restrictions. The Board also noted deficiencies in the Respondent's expert's appraisal and testimony including no development of a highest and best use, no adjustment to the comparable sales, and inadequate addressing of the concerns around easements and covenant restrictions noted by the Petitioner.

In the Interim Agency Order, the Board determined that “[n]either party presented sufficient evidence for the Board to arrive at a value.” The Board remanded the matter to Adams County for a new assessment. The remand order instructed that:

The Adams County Assessor shall develop a conclusion of value based on the market approach to value. The Adams Assessor is ordered to provide an appraisal that discusses the factual attributes of the easements on the building envelope of the subject property and any restrictions on developing the subject property found in the Declaration of Restrictions and Grant of Easements that affect the subject property. The appraisal will identify a sufficient number of vacant land sales in the subject market. The appraisal will consider factors and make appropriate adjustments as warranted, included but not limited to size, configuration, location, easements, access, and deed restrictions.

Furthermore, the Board, in its Order dated June 23, 2021, stated in paragraph 4:

In accordance with its Interim Agency Order, the Board will set this matter for a new hearing. A new document exchange deadline will be set, per the Board's Rule 11. **The parties are strongly encouraged to present appraisal evidence to aid the Board's determination of the correct taxable value for the subject property for tax year 2091.**

(Emphasis added.)

The Board determines that the Petitioner did not meet its burden proving that the Assessor's value is incorrect. Colorado case law requires that “[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding.” *Bd. of*

Assessment Appeals v. Sampson, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2019 is incorrect. Despite the proviso in the Board's Order, the Petitioner presented no appraisal evidence to aid the Board's determination of the correct taxable value of the subject.

Ms. Ferguson developed a cogent and compelling highest and best use analysis which provided support for the highest and best use of the subject parcel being for retail development. Ms. Ferguson testified that she found no evidence in the record of any adverse impact on the value of the subject due to the covenants of the development or the drainage/utility easement on the subject site. Ms. Ferguson identified and made quantified adjustments to five similar comparable land sales that were proximate to the subject property and which sold in the statutorily mandated time frame. The highest and best use analysis, the selection, adjustment and reconciliation of the adjusted values of the five comparable sales, and the attention paid to the covenant restrictions and easement satisfied the Board's remand order instructions and provided compelling support for the Adam's County Board of Equalization Value.

ORDER

The petition is **DENIED**.

APPEAL RIGHTS

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.

See § 39-8-108(2), C.R.S. (2019) (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (2019) (rights to appeal on an abatement petition).

DATED and MAILED this 7th day of October, 2021.

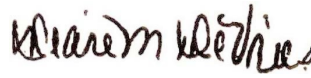
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Samuel M. Forsyth

Concurring Board Member:



Diane M. DeVries

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

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

Stephanie Cobos

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