11-6-1986

Carrara Place, Ltd. v. Arapahoe County Bd. of Equalization

SUPREME COURT, STATE OF COLORADO

Case No. 86 SA 341

CARRARA PLACE, LTD., MARIN PARTNERS, LTD., M-B ORCHARD FALLS, LTD., TUSCANY ASSOCIATES, TRIAD ASSOCIATES AND PLAZA COLORADO LTD., ORCHARD ASSOCIATES III L.P., FIRST INTERSTATE BANK OF DENVER, N.A., ALLSTATE INSURANCE CO., PARK PLACE ASSOCIATES, LTD., KROH BROTHERS DEVELOPMENT COMPANY, STATE OF CALIFORNIA P.E.R.S. (GREAT-WEST LIFE ASSURANCE COMPANY), THE GREAT-WEST LIFE ASSURANCE COMPANY, JAY C. ROULIER & BILL WALTERS, PLAZA COLORADO LTD., TRAVELERS INSURANCE COMPANY, GLENDALE OFFICE BUILDING LTD., LINCLAY CORP., TOWER I VENTURE LTD., and MEYER & LILLIAN BLINDER, JT. TEN.,

Plaintiffs/Appellants,

vs.

ARAPAHOE COUNTY BOARD OF EQUALIZATION,

Defendant/Appellee.

OPENING BRIEF

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STATEMENT OF THE CASE

A. Proceedings.

Taxpayers own and operate commercial office buildings primarily located in the Denver Tech Center ("DTC") area. The Taxpayers initially appealed their 1985 property tax assessments because they believe that as a matter of Colorado constitutional law, their office buildings are improperly assessed. Their appeals, first filed with the Arapahoe County Assessor ("assessor") in June of 1985, were promptly denied. The Taxpayers then appealed their assessments to the Arapahoe County Board of Equalization ("County Board"), which held hearings in July of 1985. Five of the Taxpayers' buildings were reduced to their 1984 assessment levels by the County Board. All other tax assessment relief was denied by the County Board on July 31, 1985.

On August 28, 1985, the Taxpayers filed a petition for Administrative Procedure Act review in the District Court for Arapahoe County pursuant to C.R.S. § 39-8-108 and § 24-4-106. On June 13, 1986, the Arapahoe County District court issued a judgment affirming in all respects the findings of the County Board. On July 11, 1986, the Taxpayers filed a petition in this Court for a writ of certiorari to the District Court of Arapahoe County, asserting jurisdiction under C.R.S. § 13-4-102(1)(b). By order of the Court dated September 8, 1986, the Taxpayers filed a notice of appeal on September 16, 1986 seeking review of the District Court decision.

B. Summary of Facts.

Taxpayers are owners of large office buildings located primarily in and about the DTC area. They seek judicial review of the refusal by the assessor and the County Board to reduce their 1985 property tax burden. Taxpayers continue to believe that the assessor's commercial assessments of large office buildings fail to comply with applicable constitutional, statutory, and decisional law of the State of Colorado.

Taxpayers' first claim involves office buildings with documented extraordinary vacancies as of January 1,1985. Taxpayers believe that under the Colorado Constitution, Article X, § 3, the determination of "actual value" for tax purposes by the assessor must take into account current 1985 rent loss caused by market driven extraordinary vacancies, and where appropriate, high tax loads. The assessor refused to take into account such documented economic obsolescence and the County Board upheld the assessor's decision.

Taxpayers' second claim emerges from a failure of the County Board to comply with the Article X, § 3 requirement that tax assessments be "just and equalized." The County Board placed significantly lower property tax assessments on most of the Taxpayers' office buildings in 1986 than were placed on the identical buildings in 1985, even though the same 1977 level of value requirement applies to both tax years and even though the record on appeal in these 1985 appeals was incorporated into the

1986 appeals reviewed and reduced by the County Board on July 31, 1986. See Exhibit A to this Brief - 1986 decision of the Arapahoe County Board of Equalization.

Taxpayers' third claim, like the second claim, results from erratic (and we believe unconstitutional) conduct on the part of the County Board. In granting relief during the 1985 hearings to only five of Taxpayers' twenty office buildings, the County Board has created a two tier system of assessment which taxes similarly situated office buildings at two different levels.

Taxpayers' fourth and final claim involves the following systematic violations of Colorado law by the assessor: (i) the assessor failed to comply with Colorado constitutional and statutory law which requires that the income, cost and market approached be considered prior to the establishment of 1985 assessment values and assembled for the first time Arapahoe County's income applications after the Taxpayers' tax protests were filed and (ii) the assessor systematically disregarded all published appraisal data for 1977, the statutory level of value year, and relied instead upon undisclosed, unidentified confidential data, in violation of Majestic Great West Savings & Loan Association v. Reole, 30 Colo. App. 564, 499 P.2d 644, 646, (1972); May Stores Shopping Centers, Inc. v. Shoemaker, 151 Colo. 100, 107, 376 P.2d 679, 683, (1962) and Colorado & Utah Coal Co. v. Rorex, 149 Colo. 502, 506, 369 P.2d 796, 799, (1962).

These legal contentions are not mere theoretical claims. They translate into the imposition of 1985 property tax burdens which we truly believe are far in excess of what the Colorado property tax laws require. For example, one of the Taxpayers' buildings, Milestone Tower, was half empty as of January 1, 1985. Using the Taxpayers' legal approach and appraisal data, that building should be valued for property tax purposes as of January 1, 1985 at $6,236,775. In contrast, the assessor has assigned a tax value of $10,195,096. Hence the integrity and fairness of Colorado's commercial assessment practices in the Denver Tech Center -- the State's finest and most celebrated new office concentration -- are at stake in this appeal. See Exhibit B to this Brief - A comparison of 1985 assessor and Taxpayer assessment values.

SUMMARY OF THE ARGUMENT

In 1982 the citizens of Colorado adopted by constitutional amendment a new plan for assessing real property for property tax purposes - a tax scheme that imposes substantially greater tax burdens on commercial property than is imposed on residential property. These appeals of 1985 property taxes imposed on office buildings located primarily in and about the Denver Tech Center (DTC) area of Arapahoe County raise several legal issues focusing on how commercial real estate is to be assessed and taxed under the 1982 amendment.

1. Issue No. 1 requires the Court to determine whether the constitutional mandate -- that real property be assessed to secure "just and equalized" valuations -- requires the assessor to take into account, when valuing commercial office buildings, 1985 extraordinary economic obsolescence (primarily 1985 office vacancy and where appropriate high property tax loads).

To disregard the impact of extraordinary rent loss in the determination of DTC office buildings' actual value is to create assessment practices which assign identical values to two buildings -- one full of paying tenants and the second empty of tenants. Such practices result in unjust and unequalized valuations in violation of Article X, § 3 of the Colorado Constitution. Moreover, adjustments for current rent loss are expressly recognized by the State of Colorado's largest commercial assessing county, Denver County, the State of Colorado property tax manual, and the mandate of this Court in Colorado & Utah Coal Co. v. Rorex, 149 Colo. 502, 506, 369 P.2d 796, 799, (1962). All three authorities recognize that economic obsolescence should not be disregarded by assessors. The level of value statutes (requiring that a January, 1977 level of value be used to measure 1985 actual value) do not prohibit the consideration of current rent loss, and if they do, the statutes are unconstitutional.

2. Issue No. 2 requires this Court to determine whether the 1986 action of the County Board in substantially reducing Taxpayers' office building assessments because of excess vacancy requires that the 1985 assessments ignoring economic obsolescence of the very same buildings be reversed and remanded. Taxpayers contend that the disparate treatment by the County Board as between the 1986 and 1985 assessments of the Taxpayers' office buildings, (when applying the same 1977 level of value data to both years), creates assessment practices which are "unjust and unequalized" under the Colorado Constitution and in violation of the equal protection guarantees of the United States Constitution. Taxpayers believe that when the constitutional precedents of this Court are examined, no "conceivable basis" to justify such disparate tax assessments can be identified.

3. Issue No. 3 is similar to issue No. 2 in that it requires this Court to determine under both the Colorado Constitution and the United States Constitution whether the County Board's creation of a two-tier system of 1985 assessments for the Taxpayers' office towers can be justified under any "conceivable basis". The Taxpayers urge this Court to find that the erratic and irrational assessments of the County Board as among the Taxpayers' buildings are unlawful and should be reversed and remanded for a just and equalized determination of 1985 actual value.

4. Issue No. 4 requires this Court to determine whether the Arapahoe County assessor has systematically disregarded applicable Colorado statutory and decisional law relating to how actual value is to be determined for 1985 property tax purposes. Taxpayers believe that the assessor's conduct repeatedly violates Colorado law and that the County Board's decision must be reversed and Taxpayers' assessments remanded for a redetermination consistent with both the judgment of this Court and the 1977 level of value evidence contained in the record on appeal.

I.

ARGUMENT

ARTICLE X, § 3 OF THE COLORADO CONSTITUTION REQUIRES THAT ECONOMIC OBSOLESCENCE BE TAKEN INTO ACCOUNT IN DETERMINING ACTUAL VALUE FOR PROPERTY TAX PURPOSES

The Colorado Constitution was substantially amended in 1982 in the area of property tax assessments. Article X, § 3 provides:

> The actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property not exempt from taxation under this article. Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property in accordance with provisions of law, which laws shall provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal.

Colorado law requires that for purposes of determining 1985 property tax assessments under Article X, § 3 of the Colorado Constitution, property values as of January 1, 1977, and not 1985 values, are to be utilized. C.R.S. § 39-1-104(10)(a). The Taxpayers' calculation of the 1977 level of value used in these 1985 appeals relies primarily on Taxpayers' Exhibit 1, a March 9, 1977 sixty-page appraisal of buildings in the Denver Tech Center area undertaken by Mr. Peter Bowes, the Taxpayers' appraisal expert.[1] Colorado law requires that actual data from calendar year 1976 be used to establish the 1977 level of value for purposes of determining the assessed value of properties in existence as of January 1, 1985. C.R.S. § 39-1-104(10)(a). Mr. Bowes explained early on why the 1977 DTC study (which relied on 1976 data found at the Denver Tech Center) is critical to determining 1985 actual value for property tax purposes:

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[1] Mr. Bowes received his Bachelors of Science from Stanford University, and his Masters in Business Administration in real estate from the University of Denver. Mr. Bowes is a principal in the appraisal company of Bowes and Company, which has been involved in Denver real estate since 1925, and he is a member of the American Institute of Real Estate Appraisers with a MAI designation (I:8-9). The record on appeal includes a three volume transcript of proceedings before the County Board. Mr. Bowes' appraisal experience appears at pages 8 and 9 of Volume I of the transcript. Further, Mr. Bowes has had occasion to testify as a property tax expert in front of the Colorado State Board of Assessment Appeals and as a result he is thoroughly familiar with the current constitutional and statutory provisions relating to the assessing of real property, particularly commercial property, in the State of Colorado. (I:9).

> Q: [Mr. Israel] Why don't you just very briefly tell us what you did in that appraisal and why that appraisal was relevant to the 1985 property tax assessments which we are currently considering.
>
> A: [Mr. Bowes] It [the 1977 approach] was appraising properties that are in the area that are being considered for protest here. They identified economic factors of rental rates, expense levels, capitalization rates and so on that we think are appropriate for consideration on the effective date January 1, 1977, for assessment purposes in 1985. (I:11).

Mr. Bowes testified that the income approach is the preferred approach for office buildings, that it is the approach utilized in Denver County, and that is the approach that has been traditionally accepted by the State Board of Assessment Appeals. (I:13-15).[2] Under the income approach a building in existence as of January 1, 1985 is assigned a 1977 rent per square foot value, that value is multiplied by the net rentable square feet of the building actually in existence as of 1985, an appropriate deduction (either 30 or 35%) is made for expenses, and the resulting net income is then capitalized to achieve market or actual value. (I:19-23).

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[2] Taxpayers established their 1985 assessment values not only on the basis of Exhibit 1, a comprehensive 1976 DTC evaluation, but also on the basis of published 1975 and 1976 values found in the Denver Metro Office directory published by the Denver Chamber of Commerce. (I:158). In contrast, as noted above, the assessor produced no data or documentation.

a. Taxpayers reduced their buildings' actual value determination on the basis of specific evidence of current rent loss

Taxpayers' appraisal expert testified, without rebuttal, that under the Colorado Constitution, Article X, § 3, actual value is to be determined by an appropriate consideration of appraisal techniques and that current economic obsolescence caused by extraordinary 1985 office vacancies suffered by many office buildings must be taken into account.[3] Failure to take into account current extraordinary rent loss results in identical tax assessments for two buildings side by side, one full as of 1/1/85 and one empty as of 1/1/85. Such a result, in the view of the Taxpayers' expert, creates a "disproportionate tax burden" on the empty one with limited ability to pay the tax (I:26-28). If extraordinary office vacancies are ignored, the constitutional mandate requiring just and equalized assessments will be breached.

Taxpayers' treatment of extraordinary vacancy follows directly from the treatment of current excess office vacancy found in Denver County. The Denver assessor makes an adjustment in 1985 office tower actual value measured by the amount of rent loss calculated to occur as a result of office vacancies

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[3] The vacancy problem among the taxpayers remains today significant. It was extraordinary as of January 1, 1985. For example, Park Place had a 67% vacancy, South Denver National Bank, 83%; the Cascades building 95%, Mountain Towers, 83%, and the Blinder Building, 72%. See Taxpayers' Exhibits 20, 30, 31, 32, 33 and 36.

documented as of January 1, 1985 (I:26). Furthermore, as we show in Part II, infra, the County Board in 1986 reversed its 1985 treatment of excess vacancy and recognized an adjustment in actual value measured in part by the quantity of office vacancy occurring in Taxpayers' buildings as of January 1, 1986. We conclude, therefore, that the Colorado constitutional actual value mandate as well as sound appraisal techniques require an adjustment which reflects rent loss caused by excess office vacancies.

A second element of economic obsolescence results from high property tax mill levies imposed on Taxpayers' office towers at DTC. Taxpayers' expert included as part of the capitalization rate a current tax component (not a significantly lower tax component from the base year, 1977) because as a matter of appraisal technique and appraisal law, it is the current tax burden which must be determined in capitalizing the current operating income to reach 1985 actual value. (I:22-23). Because many of the Taxpayers' buildings have significantly higher property tax mill levies in 1985 then they had in 1977, an additional tax load was taken into account by Taxpayers' expert in calculating the effective rent available to selected buildings owned by the Taxpayers as of January 1, 1985. As in the case of excess office vacancy, the high tax load causes a significant loss of current rental income and hence lowers an office building's actual value. To conclude, utilization of the current

property tax load is required to reach a true 1985 actual value determination, because as the Taxpayers' expert testified, a building which has a high property tax load in 1985 will have less of a market value than a comparable building carrying a lower tax load. (I:127). And under the 1977 level of value statutes, that lower 1985 actual value will be measured using 1976 rental and expense data.[4]

b. Colorado law fully supports Taxpayers' treatment of current economic obsolescence.

Taxpayers' treatment of economic obsolescence is not only mandated by the actual value requirement of Article X, § 3 of the Colorado Constitution and the unrebutted appraisal opinions in the record on appeal, but also it is fully consistent with the teachings of this Court and the State Division of Property Taxation Assessment Manual. Nearly a quarter a century ago, the

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[4] In undertaking their income appraisal, the Taxpayers complied with all available case law which confirms that the tax factor included in a capitalization rate used for property tax purposes is specifically intended to reflect the tax rate which the property owner will be paying once the current assessment is completed. See Brickman v. City of Manchester, 409 A.2d 1328, 1331 (N.H. 1979) ("We agree that the tax factor in the capitalization rate should represent, as nearly as possible, the tax rate that the property owner will be paying.") (emphasis supplied). Id. Bernora Realty Corporation v. Tax Commission of the City of New York, 321 N.Y.S.2d 677 (N.Y. 1971); Board of Assessors of Lynn v. Shop-Lease Co. Inc., 307 N.E.2d 310, 313 (Mass. 1974) ("The purpose of a tax factor in a formula for capitalizing earnings, is to reflect the tax which will be payable on the assessed value produced from the formula.") (emphasis supplied).

Court directed that economic forces influencing market value must be taken into account in the determination of actual value for property tax purposes.

> In determining the true value of taxable property ... market value shall be the guide ... It has been said many times that such value involves voluntary dealing between buyer and seller at a price the former is willing to pay and the latter is willing to take.
>
> Opinion evidence regarding market value should be based upon the same elements as would induce willing and intelligent buyers and sellers to agree, including such source of information as the contracting parties would use. ... Indeed, one who is anxious to buy but who would disregard obsolescence, when at hand, would be deemed foolhardy, and his purchase would likely prove to be a pig in a poke.

Colorado and Utah Coal Company v. Rorex, 149 Colo. 504, 507-508, 369 P.2d 796, 799, (1962).

This Court mandated that economic obsolescence caused by market conditions must be taken into account to achieve an accurate portrait of taxable value.

> The presence or absence of obsolescence enters into valuation, whatever the field of law, where the value of property has importance. This is as true of values for purposes of taxation as it is in condemnation cases ...
>
> [O]bsolescence may arise from changes in the art, shifting of business centers, loss of trade, inadequacy, supersession, prohibitory loss, and other things which, apart from physical deterioration, operate to cause plant elements or the plant as a whole to suffer diminution in value ....

> It can thus be seen that obsolescence results from an evolutionary process in which business is subject to changing economic conditions. (emphasis supplied). Id at 800, 149 Colo. at 509 and 510.[5]

An adjustment for economic obsolescence is required not only under this Court's ruling in Colorado & Utah Coal Company v. Rorex, supra, and the State Board decision in Cotter, supra, but also is expressly authorized by the Colorado Division of Property Taxation Manual which provides tax assessment guidance to the assessors.[6] The Manual expressly provides:

> Example 8, Extraordinary Economic Obsolescence - Rent Loss Method.

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[5] Furthermore, in Cotter Corporation v. Fremont County Board of Equalization, Nos. 4126 and 4127, (State of Colorado Board of Assessment Appeals, March 9, 1984), the Board expressly ruled that current economic conditions are relevant in determining current actual value. In Cotter, the State Board relied on the Court's decision in Colorado & Utah Coal Company v. Rorex, supra, to find that excess uranium production capacity found to exist in 1982 and 1983 created economic obsolescence in the value of the real property at a uranium milling facility for 1983 actual value purposes, even though the facility was to be assessed using 1977 values. To conclude, the State Board of Assessment Appeals decision in Cotter also supports the Taxpayers' claim that current economic obsolescence factors are appropriate to a determination of actual value.

[6] The State tax manuals are of importance to determining how actual value should be decided. C.R.S. § 39-1-104(10)(a) expressly provides "[T]he manuals and associated data published ... by the Administrator ... shall be utilized for determining actual value of real property in any county...."

> The amount of unusual economic depreciation can be determined by rental comparisons and applications of a gross rent multiplier to convert the rental loss into its effect on market value ... (emphasis supplied.)[7]

c. The level of value statutory defense of the assessor is unconstitutional.

The assessor contends, and the District Court so found, that taking into account the current economic obsolescence (specifically current extraordinary office vacancy and where appropriate current high tax mill levies) violates the base year concepts found in C.R.S. §§ 39-1-104(10)(a), and (11)(b)(I). As noted above, Taxpayers' appraisal expert read those statutes to require that actual value for 1985 property tax purposes be determined by first establishing the 1985 market value of the building, including its physical and economic condition, and then adjusting that value for tax purposes as if the building were being valued as of January 1, 1977. (I:28). The assessor disagrees and contends that the level of value statutes prohibit any consideration of current economic conditions.

C.R.S. § 39-1-104(10)(a) provides as follows:

> For the years 1983 through 1986, the 1977 level of value and the manuals and associated data published for the year 1977 by the administrator and approved by the advisory committee to the administrator shall be utilized for determining actual value of real property in any county of the state as reflected in the abstract of assessment for each such year.

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[7] See Taxpayers' Exhibit 45, p. 14.

In the context of 1985 excess vacancies and high mill levies, the Taxpayers adjust the current actual value to take into account the loss of current income, but the actual value determination as adjusted continues to be calculated on the basis of 1977 level of value data. The Taxpayers utilize this approach because recognized appraisal techniques and common sense strongly support such an approach. Indeed, the Taxpayers have demonstrated, and the County Board has not refuted, that if current excess vacancy and current high mill levies are "disregarded," two buildings assessed using the same 1977 level of value data will have the same 1985 assessed value even though one building is entirely vacant and the other is not, and even though one building has a high tax mill levy and the other one has a low mill levy. We find nothing in the above-quoted level of value statutes which mandates or even suggests that our approach to actual value is inconsistent with the statutes of the State of Colorado.[8]

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[8] Board of Equalization of the City and County of Denver v. Omicron Co., No. C-76302 (City and County of Denver District Court, Mar. 26, 1979), relied upon by the District Court, in fact supports our appraisal technique. The County Board contends that Omicron prohibits a consideration of current economic conditions because the Colorado "level of value" statutes prohibit an assessor from taking into account data from after 1973 in Omicron and after 1977 in the present appeals. The court in Omicron concluded that a sale which took place after 1973 did not provide permissible evidence of market value and that the percentage of gross sales at a May D&F store derived after 1973 could not be included as rental income as of 1973 for purposes of utilizing the income approach to valuation. We, of course, do not disagree with the rulings in Omicron. Omicron simply holds that in

(footnote continued)

The County Board also contends that the so-called unusual conditions portion of the level of value statutes (C.R.S. § 39-1-104(11)(b)(I)) operates to amend the level of value statutes so as to prohibit a consideration of current extraordinary vacancy even though the level of value statutes on their face do not so provide.[9] We read the unusual conditions provisions as simply confirming, for example, that during the years 1983 through 1986 (when the same 1977 level of value operates) the assessor is not prohibited from changing a current actual value determination in 1983 in the event there is an addition to the building, vandalism, fire, or significant change in the use of the property. However, in making any such adjustment, the statute requires that the assessor relate such changes to the base year level of value as if the conditions had existed at that time. In our view, by specifically requiring that such changes be "related" to the base year level of value as if the conditions "had existed at that time", § 39-1-104(11)(b)(I), the legislation confirms that the 1977 level of value measurement is to occur

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(footnote continued from previous page)
determining the 1973 level of income and expense values to be used in the preferred income method of valuation, post-1973 rental values attributable to post 1973 gross sales cannot be considered. As we have described supra, Taxpayers have strictly honored the 1977 level of value statutes by looking to 1976 data and 1976 appraisals to determine what the appropriate income and expense levels were at the Denver Tech Center.

[9] C.R.S. § 39-1-104(11)(b)(I) is reproduced as Exhibit C to this Brief.

after the economic and physical value of a building is first established as of the current tax assessment date.

This statute does not prohibit a consideration of economic obsolescence. First, the statute does not expressly prohibit application of economic obsolescence principles. Second, the unusual conditions provisions only attach once a correct value has been determined, and in our view Colorado law requires that economic obsolescence be considered in order to reach "correct" actual value. And third, even if the unusual conditions limitations apply, temporary extraordinary rent loss may be construed to constitute a "change in the use of the land" as that phrase appears in C.R.S. § 39-1-104(11)(b)(I). Hence, we do not agree that current extraordinary rent loss is prohibited from consideration by the level of value statutes.

While we do not agree with the District Court's reading of the level of value statutes as prohibiting a consideration of economic obsolescence, we urge this Court to either construe the statutes in the manner that we have set forth, or to find that the statutes deprive Taxpayers of the constitutional right to have their office towers taxed on the basis of a 1985 "actual value."

II.

THE COUNTY BOARD'S 1986 RULING REDUCING TAXPAYERS' OFFICE BUILDING ASSESSMENTS ON THE BASIS OF ECONOMIC OBSOLESCENCE VIOLATES TAXPAYERS' STATE AND FEDERAL CONSTITUTIONAL RIGHTS

Wholly apart from the constitutional claims described in Part I which bring into question the constitutionality of the level of value statutes on their face and as applied, Taxpayers bring to this Court separate and independent constitutional claims which emerge from the decision of the County Board with respect to Taxpayers' 1986 property tax appeals. Attached as Exhibit A to this Brief is an Order of the County Board dated July 31, 1986 providing Taxpayers (and a handful of non-party Taxpayers) reductions in 1986 actual value premised upon economic obsolescence generated by excess vacancies. While the decision of the County Board speaks for itself, a fair reading of the decision suggests that the County Board took into account documented 1986 vacancies as supplied by the individual Taxpayers and incorporated them into a "probable circumstance" that would have been prevalent in the Taxpayers' properties prior to or subsequent to 1977. See finding 7(a). While the County Board in 1986 did not specifically make findings of fact or conclusions of law which directly uphold the 1985 claims of the Taxpayers, the County Board in 1986, utilizing the same 1985 record on appeal now before this Court as supplemented by new evidence showing 1986 documented vacancies, provided reductions in Taxpayers'

buildings suffering from excess vacancy as of January 1, 1986. As a result of the 1986 decision of the County Board reducing Taxpayers' actual value on the basis of excess vacancy, no Taxpayer appeals were filed.

The fundamental inequality in treatment of the Taxpayers' office buildings by the County Board as between 1985 and 1986 violates both Colorado and United States constitutional provisions. Because both 1985 and 1986 assessments are subject to the same 1977 level of value requirement, the "just and equalized" provisions of the Colorado Constitution are violated when the same buildings (differing in 1985 and 1986 if at all, solely on the basis of different vacancy rates) are provided substantially different "actual value" assessments.

This Court has frequently recognized that in the area of property taxation parties are free to challenge their tax burden on the basis that it violates the just and equalized provision of the Colorado Constitution as well as the equal protection guarantee of the United States Constitution. In making such challenges the Taxpayers carry the burden to "negative every conceivable basis" which might support the disparate tax treatment. See American Mobilehome Association, Inc. v. Dolan, 191 Colo. 433, 438, 553 P.2d 758, 762, (1976); District 50 Metropolitan Recreation District v. L.D. Burnside, 167 Colo. 425, 448 P.2d 788, (1968); Friends of Chamber Music v. City and County of Denver, 696 P.2d 309 (Colo. 1985); Colorado Department of

Social Services v. Board of County Commissioners, 697 P.2d 1 (Colo. 1985), and Senior Corporation v. Board of Assessment Appeals, 702 P.2d 732, 738 (Colo. 1985). In most cases this Court has found a rational basis to support the disparate tax burden,[10] finding that different tax treatments followed from "substantial differences having a reasonable relation to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved." Burnside, 167 Colo. at 431, 448 P.2d at 790. For example in Burnside, the Court concluded that it was not arbitrary for the Legislature to exempt manufacturing, mining and other industrial properties from taxation when they are located within a recreation district, but not to exempt residential property located within the same district. In determining that the classification was not arbitrary, this Court concluded:

> Its reasonableness is apparent in the statute itself from a consideration of the type of district involved and of the type of property excluded. The section is a legislative declaration of what is obvious -- that the property excluded would not benefit from, or have any use for, playgrounds, golf courses and swimming pools. Therefore the legislature did not act in excess of its power by excluding the

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[10] But see, Pueblo Junior College District v. Donner, 154 Colo. 26, 387 P.2d 727, (1963), where this Court threw out a taxing scheme for it promoted discrimination and inequality.

> property from the district created exclusively for recreational purposes. Id. at 791, 167 Colo. at 431.[11]

Taxpayers' buildings in 1985 and 1986 are of the same class; they are subject to the same 1977 level of value, and their office towers differ, if at all, between 1985 and 1986 only by the quantity of vacancy which they are suffering. We can identify no "conceivable basis" to justify the fundamentally different tax burdens imposed on Taxpayers' office towers by the County Board. Hence, we conclude that the 1985 assessments violate both the Colorado and the United States Constitutions.

In evaluating these constitutional claims, it is important to remember that the 1986 County Board decision is predicated upon the very same 1985 record on appeal now before this Court, as supplemented by 1986 testimony. While the Taxpayers' economic obsolescence claims emphasize the impact of current excess vacancies and current tax loads on the determination of actual value (notwithstanding the 1977 level of value mandate), the record on appeal before this court as well as before the 1986

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[11] Similarly in Friends of Chamber Music, 696 P.2d at 321, this Court found constitutional a Denver admissions tax imposed upon those attending events at city facilities but not imposed upon those who attend events within Denver at facilities not owned by the city. This Court concluded that the City of Denver set forth the requisite rational basis for limiting imposition of the admissions tax to those who attend events at city facilities finding: "The tax is intended primarily to pay for improvements at Mile High Stadium; a secondary purpose is to improve other city facilities. Therefore, the city council reasonably limited the burden of the tax to those who attend events at city facilities".

County Board, contains testimony and documentation showing both current and 1977 extraordinary vacancy. Thus Taxpayers' expert testified:

> In standardizing an income approach, we and the assessor ha[ve] used a 5 percent vacancy amount. That reflects better economic times than exist[ed] January 1, 1985 or existed, for that matter, January 1, ' 77. As a result of there being excess vacancy, we are adding a measure of impact of that excess vacancy in the short term. (I:19).
>
> In that appraisal [Taxpayers' Exhibit 1] we applied the sales comparison approach and an income approach. I commented that the cost approach didn't have much validity because of the economic circumstances that were present at the time, which represented some time to fill up and so on. It was basically addressing the same issues we have talked about today, the emphasis being on income. (emphasis supplied). (I:177)

Moreover, the 12 DTC buildings specifically sampled in Taxpayers' Exhibit 1 showed vacancies as of January 1, 1977 which ranged as high as 100%, with the largest building (46 DTC) suffering from a 39% vacancy, the second largest buildings (40 & 42 DTC) suffering from a 30% vacancy, and a third major building suffering from 35% vacancy. See Exhibit C to Taxpayers' Exhibit 1. To conclude, the County Board's disparate 1985 and 1986 tax assessments imposed on Taxpayers' buildings, determined on the basis of an identical 1985 administrative record as supplemented in 1986, cannot be sustained on any "conceivable basis". The 1985 assessments are unconstitutional under both Colorado and federal law. They should be reversed and remanded.

III.

THE COUNTY BOARD'S 1985 TAX ASSESSMENTS CREATE AN UNCONSTITUTIONAL TWO TIER SYSTEM OF ASSESSMENT AS BETWEEN TAXPAYERS' OFFICE TOWERS

The County Board's constitutional violations are not limited to its disregard of current excess vacancy, nor are they limited to the imposition of fundamentally disparate tax burdens in 1985 and 1986 (1985 disregards current office vacancy and 1986 takes such vacancy into account in determining actual value). To the contrary, within the 1985 tax assessments which were determined by the County Board, are tax burdens which can not be justified on any "conceivable basis." Hence within the 1985 assessments themselves are found Colorado and federal constitutional violations. We next address what we call the two tier assessments imposed on Taxpayers.

If the Court will compare the assessor's 1977 values which he applied to several of the Taxpayers' office towers in 1984 with the assessor's 1977 values which he applied to the very same buildings in 1985, the Court will find that significantly different tax burdens emerge.

Building	assessor's final 1984 assessment value per square foot	assessor's proposed 1985 assessment value per square foot
Carrara	$ 8.50	$9.00
Marin I	$ 8.00	$8.50
Orchard Falls	$ 8.00	$9.50
Allstate Regional office	$ 8.00	$8.50

Building	assessor's final 1984 assessments	assessor's proposed 1985 assessments
Carrara	$8,112,122	$10,042,639
Marin I	$5,687,292	$ 6,235,920
Orchard Falls	$5,003,120	$ 6,509,226
Allstate Regional office	$4,963,959	$ 5,843,410[12]

The County Board refused to affirm the assessor's proposed increased 1985 assessments, and returned the assessments back to their pre-1985 level. Because the County Board gave no statement of reasons for its striking down of the four increases, we can only speculate that the County Board agreed with the Taxpayers that such increases violated C.R.S. § 39-1-104(11)(b)(I). That section permits an increase in assessment during the same 1977 base year (assuming no significant physical or economic condition has impacted the property) only when there is a showing that the 1984 assessment was in error. The County Board's refusal to allow the assessor to throw out the 1984 values and substitute significantly higher 1985 values for four of Taxpayers' buildings creates an unconstitutional tax burden for the Taxpayers' office towers which remain valued in 1985 utilizing the higher 1985 assessment values per square foot rejected by the County Board.[13]

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[12] Compare Taxpayers' Exhibits 49, 51-53 (demonstrating Arapahoe County's 1984 values) with Arapahoe Exhibit No. 2 (demonstrating Arapahoe County 1985 values).

[13] The Taxpayers' buildings which were not reduced and hence continue to be assessed on the basis of the "rejected" 1977 per square foot assessment values include: Tuscany Plaza, $10.00 per

(footnote continued)

This documentation confirms that a two tier system for valuing Taxpayers' properties emerges from the 1985 decision of the County Board. For the reasons we have described in Part II, supra, we do not find any "conceivable basis" to justify this two tier system. Hence, we conclude that Colorado's "just and equalized" constitutional standard and the federal equal protection guarantee are both violated by the erratic assessments of the County Board. We urge this Court to reverse the decisions of the County Board and remand them for a determination of 1985 actual value which properly takes into account 1977 values and assigns those values uniformly to each of the petitioning Taxpayers.

IV.

ARAPAHOE COUNTY SYSTEMATICALLY VIOLATED STATUTORY ASSESSMENT REQUIREMENTS AND DISREGARDED ALL PUBLISHED APPRAISAL DATA IN VIOLATION OF THIS COURT'S GUIDELINES

In addition to the constitutional violations described in Parts I, II, and III supra, the County Board's decision should be reversed because the County Board approved the assessor's

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(footnote continued from previous page)
square foot, Triad, $8.00 per square foot, Orchard Place V, $8.00 per square foot, Cherry Creek Place II, $8.00 per square foot, Cherry Creek Place III, $8.00 per square foot, Cherry Creek Place IV, $9.00 per square foot, Park Place, $9.00 per square foot, Solarium, $9.00 per square foot, Orchard Place IV, $8.50 per square foot, Plaza Colorado, $8.00 per square foot, Milestone, $9.50 per square foot, South Denver National Bank, $9.00 per square foot, Cascades, $9.00 per square foot, Mountain Towers, $9.00 per square foot, and Blinder, $9.50 per square foot.

systematic disregard of both Colorado statutory assessment laws and published appraisal data, in violation of this Court's guidelines. Indeed, the constitutional claims described above are more easily comprehended if the full extent of the assessor's arbitrary and capricious assessment practices are documented:

(i) the 1985 assessments from which the Taxpayers have appealed utilized exclusively a mechanical application of the Marshall & Swift Cost Manual (II:260-261 and III:328) with no application of the constitutionally mandated market or income approach until after the assessment day had passed (II:245-247);

(ii) the two senior assessors provided conflicting testimony as to whether the mechanical application of the Marshall & Swift Cost Manual indexed current cost figures back to 1977 or utilized 1971 cost values and indexed them forward to 1977. (Cf. III:328, 329 with Taxpayers' Exhibit 49);

(iii) the assessor refused to take into account any economic obsolescence, either current obsolescence or 1977 level of value obsolescence. (III:290);

(iv) the application of the preferred income approach to valuing the Taxpayers' office towers was developed for the first time by the assessor after the assessment date in anticipation of the County Board hearing. Such post hoc rationalizations are not permitted to support agency decisions

subject to judicial review under federal administrative law. They should not be permitted under Colorado administrative procedure law;[14]

(v) the assessor disregarded any and all published data provided by the Taxpayers, including a comprehensive 1976 DTC appraisal, Taxpayers' Exhibit 1, and the 1977 Downtown and Suburban Denver Office Building Experience Report of the Building Owners and Managers Association International, Taxpayers' Exhibit 47, in violation of the guidelines of this Court. On three occasions this Court has reversed county property tax assessments where the assessor failed to follow specific statutory mandates and disregarded relevant appraisal techniques and data. See Majestic Great West Savings & Loan Ass'n v. Reole, 30 Colo. App.

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[14] See e.g., Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 419 (1971) (post decision litigation affidavits are struck from the administrative record for they are not deemed to form an adequate basis for review); Securities & Exchange Commission v. Chenery Corp., 332 U.S. 194, 196 (1946) (if those grounds [the grounds relied upon by the agency in making its decision] are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis); Local 814 International Brotherhood of Teamsters v. N.L.R.B., 512 F.2d 564, 572 (D.C. Cir. 1975) ("Such post hoc rationalizations have been consistently held to be inadequate to justify an otherwise vulnerable decision. The reason of this rule is that an agency might simply search for an explanation, in this case, a distinction, to satisfy the requirement of a reasoned decision, regardless of whether the agency would have been genuinely impressed with the explanation or distinction if the matter were properly considered in the first instance. The wisdom of this rule is particularly evident when the agency's error is the failure to give a 'hard look' in the first place.") (emphasis supplied).

564, 499 P.2d 644, 646, (1972), ("The assessor had not followed the mandate of the statute in that the assessor had disregarded both earning or productive capacity..."), May Stores Shopping Centers Inc. v. Shoemaker, 151 Colo. 100, 107, 376 P.2d 679, 683, (1962); (This Court found a "complete disregard of sales in the immediate vicinity" of the property in question), and Colorado & Utah Coal Co. v. Rorex, supra, (assessment which disregarded economic obsolescence must be redetermined);

(vi) the assessor was not able to specifically identify any data upon which he relied, in part because such data was confidential (III:317), and was not data that the current team of assessors had personally gathered, but rather was data previously collected. (III:304). Further the unpublished data was not introduced into the record, and was not supported by any published economic reports or any published market studies. (III:302), and

(vii) the assessor compounded these violations of Colorado law by adopting biased appraisal techniques designed to increase the value of Taxpayers' buildings.[15]

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[15] Two examples of where the assessor disregarded recognized appraisal techniques include (a) the assessor's development of a "composite" market rent value which applies a higher multi-tenant rate to a larger single tenant square foot number per floor and (b) the assessor's selection of a 30% expense deduction required to develop a net income for capitalization (rather than the 35% expense deduction documented by the Taxpayers) which disregarded all available and published data including Taxpayers' Exhibit No. 1, and Taxpayer's Exhibit 47, impermissibly ignored costs typically associated with leasing such as tenant finish, lease

(footnote continued)

Finally, the arbitrary, capricious and unlawful assessment practices described above in paragraphs (i) through (vii) are compounded by the failure of the County Board to comply with the requirements of Colorado administrative procedure law, specifically C.R.S. § 24-4-105(14). C.R.S. § 24-4-105(14) expressly provides that an agency subject to administrative act judicial review is to provide, in its decision, a "specific statement of findings of and conclusions upon all the material issues of fact, law, or discretion presented by the record..." See Worldwide Construction Services, Inc. v. Chapman, 665 P.2d 132 (Colo. App. 1982). But the County Board in this appeal ignored § 24-4-105(14) and issued in each case a simple and conclusory phrase that "it was the decision of the Board to deny your petition". This Court has ruled that a failure to comply with the findings of fact and conclusions of law requirements of Colorado administrative procedure act requires reversal. Reversal is required because in the absence of such findings and reasons, a reviewing tribunal cannot determine whether the administrative decision is supportable. Geer v. Preston, 135 Colo. 536, 313 P.2d 980 (1957) and Lawless v Bach, 176 Colo. 165, 489 P.2d 316, (1971).

(footnote continued from previous page)
commissions and attorneys fees related to lease acquisition. In so doing the assessor contradicted the expert appraisal testimony of the Taxpayers as well as the published documentation utilized by the Taxpayers. See Taxpayers' Exhibit 47. (I:42, 154).

CONCLUSION

For all of the above reasons, the Arapahoe County Board of Equalization decisions denying Taxpayers reductions in 1985 assessments should be set aside. Taxpayers' property tax protests should be remanded to the County Board for redeterminations which are consistent with the documented 1976 level of value data, documented appraisal techniques, and the legal rulings requested by the Taxpayers.

Dated this 6th day of November, 1986.

Respectfully submitted,

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Suite 3500
Denver, CO 80203
Tel. [303] 861-2150

Attorneys for Plaintiff

EXHIBIT A

CERTIFIED COPY OF ORDER

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

At a meeting of the Board of Equalization for Arapahoe County, Colorado, held at the Administration Building in Littleton, Colorado on Thursday, the 31st day of July, A.D. 1986, there were present:

Bob Brooks	Commissioner	Present
Thomas R. Eggert	Commissioner	Absent & Excused
Betty Ann Dittemore	Commissioner	Present
Larry Vana	County Attorney	Present
Vonda Root	Deputy Clerk	Present

when the following proceedings, among others, were had and done to-wit:

RESOLUTION NO. 11-86 It was moved by Commissioner Dittemore and duly seconded by Commissioner Brooks to adopt the following Resolution:

RESOLUTIONS OF ADJUSTMENT - DANIEL ISRAEL

WHEREAS, the following Petitioners, represented by Daniel Israel, whose objections or protests have been refused or denied by the Arapahoe County Assessor, have submitted a petition to the Arapahoe County Board of Equalization; and

WHEREAS, a hearing was duly set and held before the duly appointed Referees on said petitions on July 18, 1986, at which time evidence and testimony were presented for consideration; and

WHEREAS, said hearings were closed and said Referees have presented their findings to the Board for final action; and

WHEREAS, the Board has duly considered said Petitions, the findings of the Referees, and the evidence and testimony presented at the hearings; and

WHEREAS, the Board has adopted the findings of fact of said Referees; and

WHEREAS, the Arapahoe County Board of Equalization has determined that the following properties described in the Petitions were excessively valued and should be valued as hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED by the Arapahoe County Board of Equalization as follows:

FINDINGS OF FACT

The Board makes the following findings of fact:

1. The Board has jurisdiction over this matter pursuant to Colorado Revised Statutes Title 39, as amended.

2. At the hearings held on these petitions, all the statutory requests and requirements regarding notice, due process and procedure were met.

3. Petitioners Exhibit #3 containing his letter of June 13, 1986, to Assessor (Higgins), a copy and study of the Metro Denver Office Directory listed office rental rates and fair indication of vacancies prevalent during the 1975-76 era of value determination for the 1977 Base Year Level of Value.

4. An appraisal by petitioners' witness, Nelson Bowes, done in 1976 of a DTC office bldg. that was, at that time, experiencing vacancy exceeding 5% was acknowledge as economic adversity and allowed in his valuation of the property.

5. Findings # 3 & 4 constitute new evidence and are supportive of the petitioners contention that excess vacancies in subject properties should be acknowledged as a condition that prevailed in office buildings in the 1975-76 era, and as such, should be recognized in 1986 valuation of office buildings.

6. Finding #5 does not mean that the Referees support the petitioners' other contentions of current economic climate, rent abatements, physical obsolescence, etc., as reasons for value adjustment.

7. The Referees recommend adjustment of values to those subject properties where vacancy exceeds the normal 5%, to a maximum allowance of 35% even though several properties in the petition have vacancies that exceed 35%. The 35% vacancy limitation is premised on the median average of 35% vacancy prevalent in the 20 Arapahoe County office properties listed in the Metro Denver Office Directory of the 1975-76 era of valuation.

a. The Referees reason that vacancies exceeding 5% should be allowed to 35% to render a reciprocal (15% excess vacancy = 85% reciprocal) as a factor to adjust the property value and to fairly acknowledge the economic adversity of excess vacancy as being a probable circumstance that would have been prevalent in the subject properties whether they existed prior or subsequent to 1977. Not all of the subject properties qualify for adjustment as some are land only or the vacancy does not exceed the normal 5% allowance.

8. The example following typifies a valuation adjustment on a property experiencing vacancy in excess of 5%.

Given: A property has a "Percentage of Vacancy over 5%" * ----------21%. 5% vacancy has already been allowed in the income approach to Actual Value. The reciprocal of 21% is 79% Thus, 79% X Improvement Actual Value

$1,500,000=$1,185,000	Adjusted Value
+ land	600,000
Total Adjusted Value	$1,785,000

* "Percentage of Vacancy over 5% is shown in petitioners exhibits of income approach to value on the 3rd gray line from the bottom of the page Attachment Four.

9. The Referees wanted to impress the County Board of Equalization that they are recognizing, rather than ignoring, a right due the taxpayer, and intended in the 1977 Base Year concept.

10. The Board hereby finds on the basis of the aforementioned that the valuations in these petitions have been in part excessive and that said valuations should be adjusted as hereinafter set forth.

DECISION

On the basis of the aforementioned findings of fact, the Petitions submitted, and the record made at the hearings on these matters, the Arapahoe County Board of Equalization hereby determines the following:

1) The Board hereby determines that the following properties with excessive vacancy rates should be given a reduction in valuation as hereinafter set forth.

2) The Board hereby determines that the Arapahoe County Assessor should consider excessive vacancy rates in factoring

valuation for commercial properties subject to the 1977 Base Year.

3) The Board of Equalization hereby directs the Arapahoe County Assessor to adjust his records accordingly pursuant to the improvement values as herein established. The land values have not been protested and do not change.

4) The Deputy Clerk, Vonda Root, is hereby directed to inform each Petitioner in writing of the action taken by the Arapahoe County Board of Equalization on this date.

NAME OF PETITIONER	ORIGINAL IMPR. VALUE - ACTUAL	ADJUSTED IMPR. VALUE
CARRARA PLACE LTD.	$ 7,250,152	$ 6,307,632
TUSCANY ASSOC.	$10,079,845	$ 6,551,905
PLAZA COLORADO LTD. 5670 S. SYRACUSE CIR.	$ 3,904,465	$ 3,240,706
PLAZA COLORADO LTD. 5680 S. SYRACUSE CIR.	$ 3,373,875	$ 3,205,181
PLAZA COLORADO LTD. 5660 S. SYRACUSE CIR.	$ 3,378,060	$ 3,175,376
ORCHARD ASSOCIATES III L.P.	$ 2,663,413	$ 2,449,074
CHERRY CREEK PLACE ASSOCIATES III, LTD.	$ 3,876,796	$ 3,605,420
PRENTICE POINT LTD.	$ 8,394,183	$ 5,456,219
STATE OF CALIFORNIA P.E.R.S.	$ 6,868,815	$ 6,594,062
GREAT-WEST LIFE ASSURANCE CO.	$12,102,846	$10,771,532
AUGUSTA PROPERTIES INC.	$ 2,191,344	$ 1,424,374
TRAVELERS INSURANCE CO. 5613 DTC PARKWAY	$ 8,745,802	$ 5,684,771
LINCLAY CORP.	$12,196,240	$ 7,927,556
THE TRAVELERS INSURANCE CO. 5613 DTC PARKWAY (PART OF PARKING GARAGE MILESTONE TOWER)	$ 1,502,599	$ 976,689
TOWER I VENTURE LTD.	$ 8,895,325	$ 6,048,821
BLOCK L ASSOC. (FIRST TEXAS SAVINGS ASSOC)	$ 8,750,769	$ 5,688,000
MEYER & LILLIAN BLINDER	$ 6,587,113	$ 4,281,623
FIRST TEXAS SERVICE CORP. (SAVINGS ASSOC.)	$ 2,723,645	$ 1,770,369
PHOENIX MUTUAL LIFE INSURANCE CO.	$ 1,631,660	$ 1,060,579
NU-WEST INC.	$ 2,275,918	$ 1,934,530

ORCHARD ASSOCS III, LP	$ 2,577,373	$ 2,422,731
ORCHARD PLAZA ASSOCIATES	$ 2,182,716	$ 1,549,728

Upon roll call the vote was:

Commissioner Dittemore, Yes; Commissioner Brooks, Yes.

The Chairman declared the motion carried and so ordered.

I Marjorie Page, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing Order is truly copied from the Records of the proceedings of the Board of Equalization for said Arapahoe County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Littleton, Colorado this 31st day of July 1986.

Marjorie Page, County Clerk

by: Vonda Root
Vonda Root, Deputy Clerk

EXHIBIT B

Building	1985 Valuation By Assessor	1985 Valuation By County Board	1985 Valuation By Taxpayer	1986 Valuation By County Board
Milestone	10,561,938	no adjustment	6,236,775	7,273,949
Cascades	12,120,542	no adjustment	7,174,330	8,791,450
South Denver National Bank	6,855,638	4,675,738	3,006,820	no petition
Mountian Towers	8,942,056	no adjustment	5,285,847	7,016,153
Blinder Building	7,880,562	7,148,661	4,788,808	4,843,171
Carrara	10,042,639	8,112,122	6,082,424	7,169,602
Marin I	6,235,920	5,687,292	4,485,617	no adjustment
Orchard Falls	6,509,226	5,003,120	3,994,071	no petition
Tuscany	9,305,307	no adjustment	5,200,478	7,407,974
The Triad	13,500,002	no adjustment	9,065,934	12,464,863
Orchard Place V	3,124,501	no adjustment	2,900,426	2,936,960
Cherry Creek Place III	4,302,384	no adjustment	3,180,109	4,029,590
Cherry Creek Place IV	4,667,650	no adjustment	3,458,536	no adjustment
Plaza 25	7,114,750	6,400,860	5,056,513	no adjustment
Allstate Regional	5,843,410	4,963,959	3,824,132	no adjustment
Park Place	7,572,045	no adjustment	4,529,248	no petition
Prentice Pointe	4,539,320 (50% complete)	no adjustment	3,829,840	5,943,743 (85% complete)
Solarium	7,527,685	no adjustment	4,958,454	7,252,932
GWL Center	7,636,263 Tower I only	no adjustment	4,016,760	12,199,865 Tower I and Tower II

Building	1985 Valuation By Assessor	1985 Valuation By County Board	1985 Valuation By Taxpayer	1986 Valuation By County Board
Orchard Place IV	2,996,210	no adjustment	2,377,810	2,229,240
Plaza Colorado	3,058,470	no adjustment	2,464,451	no adjustment

EXHIBIT C

C.R.S. § 39-1-104(11)(b)(I) states as follows:

> The provisions of subsections (9), (10), and (10.1) of this section are not intended to prevent the assessor from taking into account, in determining actual value during the intervening years between base years, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value. If any real property has not been assessed at its correct base year level of value, the assessor may revalue such property for an intervening year so that the actual value of such property will be its correct base year level of value; however, the assessor may not revalue such property above or below its correct base year level of value except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition. For the purposes of this paragraph (b), an unusual condition which could result in an increase or decrease in actual value is limited to the installation of an on-site improvement, the addition to or remodeling of a structure, a change of use of the land, the creation of a condominium ownership of real property as recognized in the "Condominium Ownership Act", article 33 of title 38, C.R.S., any new regulations restricting or increasing the use of the land, or a combination thereof, any detrimental acts of nature, and any damage due to accident, vandalism, fire, or explosion. When taking into account such unusual conditions which would increase or decrease the actual value of a property, the assessor must relate such changes to the base year level of values as if the conditions had existed at that time.

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of November, 1986, mailed a true and correct copy of the foregoing OPENING BRIEF by placing same in the United States mail with postage prepaid and properly addressed to:

James E. Heiser
Assistant City Attorney
5334 South Prince Street
Littleton, CO 80166

Irma Edmondson

Irma Edmondson