BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **TWO LONG BROTHERS LLC** v. Respondent: **BOULDER COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941	**Docket Number: 40011 and 41073**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on September 24, 2003, Karen E. Hart and Rebecca Hawkins presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Robert Gunning, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

1505 Pearl Street, Boulder, Colorado
Boulder County Schedule Nos. R0006728, 006728-01

Petitioner is protesting the 2001 and 2002 actual value of the subject property. The subject property consists of a 9,315 square foot cinderblock and glass building built in 1971 as a Goodyear tire store. It has a 21,000 square foot corner site with Pearl Street frontage. The site is zoned RB1-E, which allows a wide range of retail, office, residential and public uses. The improvement lies in a historic preservation district that requires architectural review of any proposed improvements.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued. The Respondent did not value the property based on its actual use. Respondent assigned a vacant land value. A value should be established based on the present use of the property. The income approach is the most applicable method of value.

Respondent:

Respondent contends that the issue is market value as of June 30, 2000. The property has a good location across the street from the Pearl Street Mall and land value should be considered. The building is being under-utilized and the structure does not contribute much, if any, value. Comparable sales used by the Petitioner are not comparable and the income approach is not applicable.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, Registered Appraiser and agent for Petitioner presented the following indicators of value:

Market:	$838,350.00
Income:	$725,312.00
Cost:	N/A

2. Mr. Stevens testified that this assignment was taken on a contingency fee basis. The subject property was built as a tire repair shop in 1971, with a net rentable area of 9,162 square feet and four bay doors. It has ample parking on a 21,000 square foot site. It is currently used as a mini-mall/flea market with a variety of small shops. He testified that the structure could still function as a tire store, but is in need of repair.

3. Petitioner's witness presented three comparable sales ranging in sales price from $368,500.00 to $1,030,000.00 or $64.69 to $131.74 per square foot, and in size from 3,226 to 12,500 square feet. After adjustments were made, the sales ranged from $339,988.00 to $1,251,500.00 or $67.93 to $105.39 per square foot.

4. Based on the market approach, Petitioner's witness presented an indicated value of $838,350.00 for the subject property.

5. Mr. Stevens testified that sales similar to the subject property were difficult to find, and none were tire stores. He used three comparable sales: an appliance store, a Yamaha parts store and Cycles of Boulder. Mr. Stevens testified that he adjusted the sales for time, location, age, physical characteristics and size. Interior finish is reflected under physical characteristics on page 25 of Petitioner's Exhibit A. Sale 1 was adjusted for its superior interior finish, and for its inferior location, age and size. Sale 2 required a time adjustment, is inferior in location, slightly newer in age and smaller in size. Sale 3 required a time adjustment, a positive location adjustment and an adjustment for age. Sale 3 is somewhat similar to the subject in size and physical characteristics.

6. Mr. Stevens testified that he did not put much reliance on the market approach and gave most weight to the income approach. He cited Colorado Revised Statutes 39-1-103(5)(c) as the basis for not doing a highest and best use analysis. (Reference page 22, Petitioner's Exhibit A.)

7. Mr. Stevens testified that a highest and best use analysis should not be considered; therefore, a cost approach was not presented.

8. Petitioner's witness presented an income approach to derive a value of $725,312.00 for the subject property.

9. Mr. Stevens testified that his income approach does not support the land value used by the Respondent. Mr. Stevens gave most weight to the income approach due to a rental agreement in place on the subject property. He presented six lease comparables ranging from $10.51 to $26.00 (unadjusted) per square foot. They range in size from 1,000 to 9,162 square feet. All of the lease comparables have triple net leases and are located close to the Pearl Street Mall. Lease comparable 1 had a four-year lease, is a historic building with a nice interior finish, and is located three blocks from Pearl Street. Lease comparable 2 had a five- year term, is two blocks from Pearl Street and is a newer building with good interior finish. Lease comparable 3 had a five-year term, is one block from Pearl Street and is a newer building. Lease comparable 4 had a five-year term, is across the street from the subject property and is a newer building. Lease comparable 5 is the subject property, is located across the street from the Pearl Street Mall and is rented for $10.51 per square foot on a month-to-month basis. Mr. Stevens testified that the lower rent for the subject is due to the lack of interior finish.

10. Mr. Stevens developed his capitalization rate utilizing three comparable sales and the 2000/2001 Real Estate Survey published by Scott Stahl & Burbach. Based on this information, he applied an 11% capitalization rate, 5% vacancy and collection loss, 3% management fee and an additional 10% for operation costs, maintenance and reserves.

11. Under cross-examination, Mr. Stevens testified that he is a biased witness and that his report was not an appraisal. His report is a limited summary consulting assignment. He testified that the subject property was originally designed as an auto repair/tire shop. As of the assessment date, the property no longer had curb cuts, was leased and used by Pearl Trade Center. The subject property was purchased in August 1997 for $1,200,000.00. It was vacant at the time and the purchaser bought the property for its land value. Mr. Stevens believes a potential purchaser would look at the property for land value. He did not consider the value of the land as though vacant and

did not complete a highest and best use analysis. Mr. Stevens testified that the commercial market was going through an upward trend from 1997 through June 2000 and the owners would have sold the property based on land value.

12. Under redirect, Mr. Stevens testified that he attempted to find comparable market data and researched properties located on the subject's block. The sales he found were not arms-length transactions, were not indicative of the market and had no market exposure. These properties were purchased as part of an assemblage and the buyer went directly to the sellers. Mr. Stevens explained that comparable sales 2 and 3 are in the same general neighborhood as the subject. They are about 10 blocks east and do not have the same mall influence. He testified that no land analysis was done; however, he adjusted 5-10% for location. He could not find any market data for a time adjustment and used a 10% adjustment for age. No adjustments were made for excess land.

13. Upon further questioning, Mr. Stevens explained that he feels physical characteristics would have more affect in the marketplace than location. Physical characteristics include interior finish and configuration. Mr. Stevens did not consider differences in zoning when analyzing the sales. He felt zoning did not have an impact since the sales had existing businesses. He did not account for excess land on the subject property and used the existing lease rate of the subject. He testified that the subject's lease rates are lower than other lease rates he found in his rental survey. Mr. Stevens testified he based his value on the use of the subject property as of the assessment date.

14. Upon re-cross, Mr. Stevens testified that the value of the subject property would vary depending on the rent and capitalization rate. He considered the subject property as freestanding retail. The 11% capitalization rate he used is higher than any published at the time.

15. Mr. Stevens testified that the land-to-building ratios on all sales were within a reasonable range and were similar to the subject, so no adjustments were warranted. When asked about the lease comparables, Mr. Stevens testified that leases 1, 2, 3, and 4 are true retail buildings. They have lighting, walls and partitions that the subject does not. He used a slightly higher than normal capitalization rate of 11% because the property has a higher risk rate. The tenants in the subject property are not Class A or B, but probably C or D. They have little or no credit rating and no staying power as compared to major retailers.

16. Upon questions from the Board, Mr. Stevens testified that the lease on the subject started in December 1998, is month-to-month and is not typical for this market.

17. Petitioner is requesting a 2001 and 2002 actual value of $750,000.00 for the subject property.

18. Respondent's witness, Mr. Samuel Forsyth, a Certified Residential Appraiser and Chief Deputy Assessor with the Boulder County Assessor's Office, presented the following indicators of value:

Market:	N/A
Cost:	$2,520,000.00
Income:	N/A

19. Mr. Forsyth testified that he completed an exterior inspection of the subject property at the end of 2002 and again in early 2003. He established and drove the neighborhood, talked to the city planning and zoning departments, classified the subject property as retail, and considered three approaches to value.

20. Mr. Forsyth testified that the interviews in the planning and zoning departments were conducted to understand the exact nature of the zoning and to determine trends in the subject area. Location became more important after talking with the planning department. The zoning for the subject is tied into the zoning for the mall. Consideration must be given to the direction of the neighborhood. The subject area has experienced quite a bit of revitalization. He testified that the subject property is unusual for the neighborhood due to the nature of the improvements and the size of the site. It is located at the east end of the downtown pedestrian Pearl Street Mall.

21. Mr. Forsyth testified that he analyzed highest and best use in order to define the appraisal problem for this particular property. He explained that the subject site has the same zoning as the mall and allows a floor area ratio of 1.7:1. The current floor area ratio as the property exists is .44:1 on three city lots. Low floor area ratios encourage redevelopment, as supported by the land sales he used. The improvements on Sales 1, 2, 3, and 4 had been razed for development.

22. Mr. Forsyth testified that, although the properties were purchased for an assemblage, they were reflective of market value and had reasonable exposure on the open market. He believes any property in that location and in that condition has market exposure without being listed for sale.

23. Mr. Forsyth testified that the data for the market approach was inconclusive.

24. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $2,520,000.00.

25. Mr. Forsyth testified that he calculated a depreciated replacement cost for the improvement and found land sales within an 18-month period. All land sales were from the same neighborhood as the subject, were improved at the time of sale and had similar floor area ratios. The sales were all located in an area of redevelopment and the improvements were under-utilized for the land size. As of the assessment date, the improvements were razed on comparable sales 1 through 4. He spoke to the purchaser of sales 2, 3 and 4 and concluded that the buyer paid a fair value for the properties. The purchaser considered the properties as vacant land. Mr. Forsyth testified that the assemblage might have increased its market value.

26. Mr. Forsyth testified that he reconciled the values by looking at the adjusted value per square foot and by taking into consideration the value of the assemblage. He felt floor area ratios

were compelling when analyzing the land sales. The fact that the improvements were razed on four of the five sales supports the majority of the value being in the land. He concluded to a value of $120.00 per square foot for the land.

27. Mr. Forsyth testified that he time-trended the subject property at 26.6% for an eighteen-month period, from the date of sale in August 1997 to the assessment date. The value would be $1,788,000.00 using this method of analysis. He testified that the time adjustment used by the Petitioner is too low and that the location adjustment is incorrect.

28. Mr. Forsyth testified that he analyzed the data for an income approach. He reviewed Petitioner's income approach and concluded that no consideration was given to excess land. Mr. Forsyth felt the buildings were under-utilized and that the data was inconclusive; therefore, Respondent did not present an income approach to value.

29. Under cross-examination, Mr. Forsyth testified that the same buyer purchased all five of the comparables he used to establish land value in the cost approach. The buyer had no intention of putting tenants in the existing buildings - he purchased the properties for the land. Four of the five properties were razed for redevelopment. Based on this analysis, Mr. Forsyth concluded that the best representation of value is the cost approach as the value is in the land.

30. Upon redirect, Mr. Forsyth testified that the zoning encourages razing the improvements. After questions from the Board, Mr. Forsyth explained that the difference in value between the actual sales price and the time- trended value was due to the neighborhood experiencing more appreciation than the trending indicates and to the vacant status of the property at the time of purchase.

31. Respondent's witness, Mr. Ron Benko, a specialist from the Department of Property Taxation, testified that the goal of the tax system is to base value on all three approaches for commercial property. The actual value equals the market value. If the value as if vacant exceeds the value as improved, the improvement does not contribute any value or an error was made in the other two approaches. Nothing exists to prohibit valuing property that is improved as vacant land. If there were excess land, the market or income approaches would not recognize it unless the comparables used had similar excess land. Zoning drives the excess land factor.

32. Mr. Benko testified that he did not review Petitioner's appraisal report, but has listened to the testimony. He questioned how the income approach accounted for the excess land. The income and market approaches would not recognize excess land unless the comparables used also had excess land and/or a similar amount of land. Zoning would be the important factor to consider as it drives the floor area ratio.

33. Under cross-examination, Mr. Benko testified that there is not a definition of under-utilized property in the Colorado Statutes or in the Assessors Reference Library. Actual use is the primary criteria for classification. If he determined that the property was under-improved and that the improvements did not contribute any value, then the value would be in the land. He testified that the subject improvements do not meet the definition of a minor structure. He defined minor structure as any structure in such poor or rundown condition that it does not add value and is not

suitable for any purpose.

34. Respondent assigned an actual value of $2,206,000.00 to the subject property for tax years 2001 and 2002.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the valuation of the subject property for tax years 2001 and 2002 was correct.

2. The Board agrees that the classification of the subject property for tax purposes is commercial and that this classification shall remain until such time as the actual use changes. The Board agrees with Respondent that this provision applies to classification and not to valuation.

3. Petitioner's witness contends that the value should be based on the market and income approaches that reference the current use of the improvement. The Respondent's witness considered all three approaches to value and gave most weight to the cost approach. The cost approach determines the value of the land as if vacant and is based on the understanding that the market relates value to cost. The Board was persuaded by Respondent's testimony and evidence and agrees that the cost approach is the most reliable.

4. In Board of Assessment Appeals v. Colorado Alberg Club, 762 P.2d 146, 151 (Colo. 1988), the Colorado Supreme Court held that "…reasonable future use is relevant to a properties current market value for tax assessment purposes." The court explained that Colorado tax statute "does not preclude consideration of future uses." The court differentiated between "reasonable future uses" and "speculative future uses" that the court said could not be considered in determining market value for property tax purposes. The Arlberg case involves vacant land; however, the court did not limit its findings to vacant land. The Board's findings are consistent with the limitations on the consideration of future use and are supported by the evidence.

5. While the Board upholds that the exact future highest and best use of the subject property cannot be predicted, the general type of future use can be anticipated by zoning, land use, the city's comprehensive plan, market anticipation and trends. The issue of redevelopment as a reasonable future use must be addressed. The Board is not speaking of valuing the property after redevelopment. The highest and best use of the subject property is only relevant to the Board's determination of the price that a willing buyer and seller would agree upon for the property in its present condition. Based on evidence and testimony, the Board finds there is a preponderance of evidence to support a use other than the present use:

- Based on testimony, the subject property was purchased for vacant land in 1997.

- Sales surrounding the subject property reflect similar under-utilized buildings that sold for land value. Four out of five structures presented in Respondent's Exhibit 1were razed for redevelopment of the land prior to June 30, 2000.

- The subject's land size and location are conducive to redevelopment.

- The existing zoning encourages redevelopment:

RB1-E: The regional business area of Boulder Valley known as the Central Business District, where a wide range of retail, office, residential, and public uses are permitted and in which many structures may be renovated or rehabilitated. A balance of new development with the maintenance and renovation of existing buildings is anticipated, and where development and redevelopment consistent with the established historic and urban design character is encouraged.

6. The Board must consider that a developer would pay a higher price for the subject property because the potential for redevelopment exists.

7. Respondent offered five land sales within a three-block radius. All have a positive influence from the Pearl Street Mall and three have corner locations. These sales have similar zoning that encourages redevelopment and demonstrate that the subject would sell for land value. Petitioner's witness, Mr. Stevens, did not perform an appraisal, did not consider zoning or land-to-building ratios, or acknowledge excess land. Mr. Stevens presented an income approach based on current month-to-month leases only; he did not account for the location and land size of the subject property.

8. The Board was convinced that the location of the subject property is a key issue and the value is in the land. The Board concluded that Respondent valued the subject property according to its actual use, although the value is indicated by the land value component in the cost approach. The Board notes that Respondent's Exhibit 4 reflects a value for the improvement as well as the land. The relationship between highest and best use and land value is an indicator of whether an existing improvement is the highest and best use of the property. In this case, the land value is the major component of total property value.

9. After careful consideration of all the testimony and evidence presented, the Board affirms Respondent's assigned value of $2,206,000.00 for tax years 2001 and 2002.

ORDER:

The petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 5th day of December, 2003.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca A. Hawkins

Karen E Hart

Karen E. Hart

This decision was put on the record

DEC 04 2003

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

Penny S Lowenthal

Penny S. Lowenthal

STATE OF COLORADO
SEAL
BOARD OF ASS