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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GEORGE T. MUISENGA,</p> <p>v.</p> <p>Respondent:</p> <p>GUNNISON COUNTY BOARD OF EQUALIZATION.</p> | |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: George T. Muisenga Address: P.O. Box 1820 Crested Butte, Colorado 81224 Phone Number: (970) 209-2270 E-mail: buyerbroker@rmi.net</p> | <p>Docket Number: 41340</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on April 19, 2004, Steffen A. Brown and Judee Nuechter presiding. Petitioner appeared pro se. Respondent was represented by Mr. Thomas A. Dill, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**229 Elk Avenue, Crested Butte, Colorado
(Gunnison County Schedule No. R003174)**

Petitioner is protesting the 2003 actual value of the subject property; a retail building located at 229 Elk Avenue, Crested Butte, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued for tax year 2003. Built in the 1880s, the subject property was a single-story steel sided building that originally had approximately 3,000 square feet. Additional buildings with a common roof were added over the past years. The subject property now consists of 4,200 square feet and has been divided into five potential rental spaces.

Respondent:

Respondent contends that the subject property is located within Tract B of the Muisenga Subdivision and that the improvements were properly valued with all three approaches to value considered. The market approach indicates a price per square foot for the comparable sales at \$292.00 to \$497.00. The subject property is currently valued at \$164.00 per square foot. The income approach does not equate to market values on Elk Avenue in Crested Butte.

FINDINGS OF FACT:

1. Mr. George T. Muisenga, presented an indicated value of \$443,224.00 based on the income approach.
2. Petitioner did not present a market approach for the subject property.
3. Mr. Muisenga testified that this hearing is for three lots, which are indicated as Lot B of the Muisenga Subdivision. There are deficiencies on the lot, which should indicate a lower value than the value assigned by the Respondent. Respondent did not utilize the income approach and the Petitioner feels that the income approach is the most realistic approach in that it would clearly show that the current incomes would determine a much lower value for the subject.
4. The witness testified that the Gunnison County Board of Equalization letter that he received indicated that both tract A and B were originally assessed based on the income approach until the current assessment period.
5. The Petitioner testified that there has been a general economic downturn, retail spaces are empty, and a lack of tourism in the area indicates lower values in the Crested Butte area. Limited parking and use ordinances have affected values. There is a short labor period due to weather. The roof system on his building needs immediate attention. Lenders typically lend on cash flow and the actual income determines value.

6. Under cross-examination, the Petitioner testified that there have been no signs or advertising for vacant spaces in his building within the past 60 days since he is in the process of remodeling. His office is in the subject building although he has not sold real estate for five years. He recognizes that the Respondent has indicated that the building is in poor condition and although he could spend money for remodeling, he could not increase the rents at this time. Mr. Muisenga told the Board that he believed the Gunnison County Board of Equalization used the income approach for his property.

7. Petitioner is requesting a 2003 actual value of \$490,000.00 for the subject property.

8. Respondent's witness, Mr. Mark W. Templeton, a Licensed Appraiser with the Gunnison County Assessor's Office, presented the following indicators of value:

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| Market: | \$690,000.00 |
| Cost: | \$560,470.00 |

9. Based on the market approach, Respondent's witness presented an indicated value of \$690,000.00 for the subject property.

10. The Respondent's witness testified that there was a clerical error on page 2 of Respondent's Exhibit 1 and that the final opinion of value for the subject property should be \$690,000.00.

11. Mr. Templeton testified that the subject property is located in B-1 zoning and is identified as Tract B of the Muisenga Subdivision. The property faces Elk Avenue, which is the main street through the business district of Crested Butte. The rear of the building is a shed and no value has been assigned to this amenity. The building is in poor condition. The structure has an estimated remaining economic life of -2 years. In other words, the building is at the end of its economic life and must be remodeled if it is to be used as a sustainable building.

12. The witness testified that the cost approach is not a realistic value due to its age. It is less reliable due to the age of the building and the inability to get a non-subjective depreciated value.

13. Mr. Templeton indicated that Crested Butte is often used as a parking lot for Mt. Crested Butte and the ski area. Elk Avenue is approximately six blocks in length and is the business district for Crested Butte.

14. The Respondent's witness testified that the income approach is not applicable to the sale prices in this market. A rental rate cannot be achieved to recoup the costs of purchasing commercial properties in Crested Butte because buyers are attempting to buy a life style. He did not use the income approach since it does not achieve market value in Crested Butte.

15. Respondent's witness presented three comparable sales ranging in sales price from \$385,000.00 to \$950,000.00 and in size from 1,058 to 4,162 square feet. After adjustments were made, the sales ranged from \$292.17 to \$446.68 per square foot. The Respondent's assigned value for the subject property equates to \$164.00 per square foot.

16. The witness testified that time adjustments were based on state statute. There is a four-year time frame for data collection for commercial properties to the spring of 2000. His data indicated that a 1.75% per month adjustment was warranted for the 18-month period prior to September 11, 2001. After that date there appears to be no adjustments for time due to the economic conditions.

17. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$560,470.00.

18. Under cross-examination, the Respondent's witness testified that the market approach must be utilized in this marketing area for valuation. Since some of the spaces are vacant or owner-occupied, the income approach is inappropriate.

19. Upon questions from the Board, the witness indicated that time adjustments were based on data points after September 11, 2001, which indicated no increases in value after that point and very few sales that could support any increase in value. He utilized the 18 months prior to September 11, 2001 to determine the time adjustment.

20. In response to the Board's question regarding what type of adjustment was applied to the comparable sales for condition, the Respondent's witness testified that he utilized a qualitative analysis instead of a dollar adjustment. Sale 3 was renovated and well maintained and was considered to be superior to the subject. Sale 1 was new construction. Mr. Templeton testified that quality type 4 is good, 3 is average and 2 is economy construction. He applied an additional adjustment for age to Sales 1 and 2. He did not do an income approach since a buyer cannot rent a property based on the sale price in Crested Butte. He told the Board that \$20.00 to \$30.00 per square foot is a typical rent basis, whereas the purchase prices do not indicate this. In the Gunnison area, which is 30 miles south of Crested Butte, the market and the income approaches are more similar and are typically utilized in determining value.

21. During rebuttal testimony, the Petitioner indicated that he did not buy a lifestyle when he purchased the subject building; he purchased an investment. Due to the current economy in Crested Butte, his income or rental income has to be based on the economy and not on the value of his property and therefore the value of his building should be based on the income approach. If someone purchases a building for lifestyle, that should not affect his rental income. His building has been nearly vacant for five years and the quality of the tenants in his building is considered low.

22. Respondent assigned an actual value of \$690,000.00 to the subject property for tax year 2003.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was correct.
2. The Respondent provided a well-documented appraisal report that was persuasive to the Board and supported the assigned value for the subject property. The Board notes that the comparable sales presented by the Respondent indicated a substantially higher price per square foot than the \$164.00 per square foot assigned to the subject property.
3. The Board recognizes that the economy in the Crested Butte marketplace during part of the base period was somewhat unstable. Additionally, the Board agrees with the Respondent that potential purchasers of property in the Crested Butte area are most likely buying a lifestyle. Therefore, the income approach has limited application for valuation purposes.
4. The Board agrees with the Respondent that the cost approach is inapplicable to the subject property due to the age of the improvements and the inability to subjectively determine the physical depreciation.
5. The Petitioner did not present any comparable sales, but he did provide a hand written income analysis of the subject property. The Board was not able to determine the time period for this income analysis since the Petitioner did not assign a date to his document. The Board would have preferred a dated income analysis that indicated income and expenses during the base period.
6. Based on all of the evidence and testimony presented, the Board concludes that the 2003 actual value of the subject property should be upheld at \$690,000.00.

ORDER:

The petition is denied.

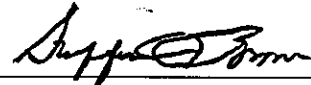
APPEAL:

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

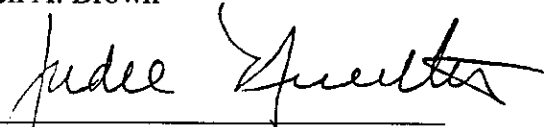
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 18th day of May, 2004.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

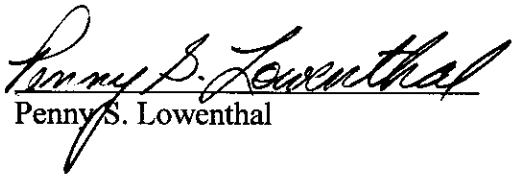


Judee Nuechter

This decision was put on the record

MAY 17 2004

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



Penny S. Lowenthal

