

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JAMES F. AND PAULINE GEBHART,</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: James F. Gebhart Address: P.O. Box 209 Crested Butte, Colorado 81224 Phone Number: (970) 349-5813</p>	<p>Docket Number: 42372</p>
<p>ORDER</p>	

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

PROPERTY DESCRIPTION:

Subject property is described as follows:

**401 Elk Avenue, Crested Butte, Colorado
(Gunnison County Schedule No. R003532)**

Petitioner is protesting the 2003 actual value of the subject property, a one and one-half story frame building with approximately 2,935 square feet above grade and a 1,150 square foot basement. The property is zoned B-3 and was built in 1977.

ISSUES:

Petitioner:

Petitioner contends that the Gunnison County Assessor has consistently failed to equalize values on Elk Avenue. Valuations should be the same whether building or buying if the square footage is similar; there is no consistency between the price per square foot of a large building and a small building. Petitioner does not like Respondent using the subject property as a comparable sale since he believes it is an aberration due to a 1031 exchange.

Respondent:

Respondent contends that the subject has been correctly valued for tax year 2003. All three approaches to value were considered and the most weight was placed on the market approach. In support of using the subject as a comparable sale, Respondent stated that there was no evidence of a 1031 exchange and it was not referenced on the TD 1000.

FINDINGS OF FACT:

1. Petitioner, James F. Gebhart, presented the following indicators of value:

Market:	\$861,766.00
Cost:	\$788,410.00
Income:	\$800,000.00

2. Based on the market approach, Petitioner presented an indicated value of \$861,766.00 for the subject property.

3. Petitioner presented six comparable properties. The comparable property values were based on the Gunnison County Assessor's June 30, 2002 assessments. Assessments ranged in value from \$1,247,000.00 to \$1,535,030.00 and in size from 3,573 to 11,161 square feet. No adjustments were made to the comparable properties for differences in physical characteristics. Based on the assessed values, Petitioner concluded to an average of \$202.26 per square foot.

4. Mr. Gebhart testified that the subject property was purchased in a reverse 1031 tax deferred exchange and he did not consider it to be an arms-length transaction; therefore, Petitioner does not believe that Respondent should use it as a comparable sale.

5. Mr. Gebhart testified that the subject property has 2,935 square feet. His basement measurement is 1,150 square feet compared to Respondent's measurement of 1,227 square feet. Respondent valued the subject property based on a total of 4,162 square feet, which includes the basement. The basement has one door, no windows and is prone to flooding; it is only useful for storage and mechanical purposes. Petitioner does not believe it is fair for the Respondent to include the basement in the calculations.

6. Referring to Petitioner's Exhibit A, page 5, Mr. Gebhart testified that the Prudential Building is the most similar to the subject but has 4,850 square feet, all above grade. It is in a superior "A" location in the heart of the downtown core business area, compared to his "B" location. It is also a newer building and of better quality than the subject. Multiplying the Prudential Building's assessed value of \$262.34 per square foot by the above-grade square footage of the subject property (2,935 square feet) equals \$769,968.00. Multiplying the commercial storage rate of \$59.00 per square foot by the 1,227 square feet of basement area equals \$72,393.00, resulting in a total indicated value of \$842,361.00.

7. Based on the cost approach, Petitioner presented an indicated value of \$788,410.00.

8. Mr. Gebhart estimated the land value to be \$250,000.00. He estimated the main and upper level of the subject (2,935 square feet) at a cost of \$150.00 per square foot and the basement (1,227 square feet) at a cost of \$80.00 per square foot to derive a total of \$788,410.00 for the subject property based on the cost approach.

9. Petitioner presented an income approach to derive a value of \$800,000.00 for the subject property.

10. Mr. Gebhart testified that the net income is \$60,000.00 per year. He applied a capitalization rate of 7.5% resulting in a value of \$800,000.00 based on the income approach.

11. With regard to the half lot that is zoned R1, Mr. Gebhart testified that it can only be used for snow storage and parking; it cannot be built upon. Based on storage space rates in Crested Butte, he estimated the yearly income at \$1,530.00. Capitalizing this at 7.5% results in a value of \$20,403.00 for this parcel.

12. Mr. Gebhart testified that Crested Butte has extreme restrictions in zoning and land use, which result in high prices. Further, he does not understand why Respondent ignored the income approach just because the County believes that there is a certain lifestyle in Crested Butte and that a buyer will pay anything for a commercial property.

13. In cross-examination, Mr. Gebhart testified that he believed the 1031 exchange might have played some part in selling the subject property due to the previous owner's financial problems. As to the foot traffic on Elk Avenue, most riders get off the bus at 2nd Street or they ride the bus further downtown and do not stop in front of the subject.

14. Upon questions from the Board, Mr. Gebhart testified that his CPA recommended a capitalization rate of 11.3%, that the most recent sale indicated a 6% to 7.5% capitalization rate. Mr. Gebhart applied a conservative capitalization rate of 7.5%.

15. Petitioner is requesting a 2003 actual value of \$861,766.00 for the subject property.

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

Market:	\$994,718.00
Cost:	\$833,150.00
Income:	N/A

17. Based on the market approach, Respondent's witness presented an indicated value of \$994,718.00 for the subject property.

18. 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 \$441,525.00 to \$1,216,000.00 or \$292.17 to \$446.68 per square foot. Respondent's assigned value for the subject property equates to \$239.00 per square foot.

19. Mr. Templeton described the subject as a one and one-half story office building built in 1997, which contains 2,425 square feet on the main floor. The subject is zoned B-3 - Business/Historic Residence. The subject is currently used as a real estate office.

20. Mr. Templeton testified that the subject is located on two lots; each lot is 25 feet wide and 120 feet deep and front Elk Avenue. There is an additional half lot that measures 25 feet by 62.5 feet and is zoned R-1. It is located across the alley to the north of the improved property and has a small storage shed with no value and classified as inventory only. The subject was remodeled into an office building from a bakery in 2000. The basement contains 1,150 square feet and is used as a break and storage room.

21. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$833,150.00.

22. Mr. Templeton testified that the land value was established from one sale of a B-3 zoned property, which occurred October 1998 at a price of \$42.55 per square foot. The value of \$36.50 per square foot for the half lot zoned R1 was derived from three sales that occurred during the base period. The concluded estimated land value was \$312,330.00.

23. Mr. Templeton testified that the cost approach would be a good indicator of value but it does not take into account that the subject was remodeled from a bakery into an office, which makes it less reliable.

24. Mr. Templeton testified that he did consider the income approach, but due to insufficient income information, the income approach could not be completed.

25. In cross-examination, Mr. Templeton testified that his adjustments considered location, architectural style, construction quality, shape and size of the building, condition and age. As to the distinction between the cost to build and the amount someone would pay for an existing building, Mr. Templeton testified that there is a difference between cost and market value.

26. Upon questions from the Board, Mr. Templeton testified that he gave no weight to the cost approach because of the remodel and the change in use from a bakery to a real estate office. As to the time adjustment, Mr. Templeton testified that it was based on data points, which were difficult to determine after August 2001; therefore, he utilized the 18-month period prior to September 11, 2001 to determine a time adjustment of 1.75% per month for the Crested Butte marketing area.

27. Respondent assigned an actual value of \$995,000.00 to the subject property for tax year 2003.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. The Board agrees with Petitioner that the basement of the subject property should not be included when comparing it to sales where all the square footage is above grade. Basement areas are typically calculated at a different rate, especially since evidence and testimony support its use as storage, mechanical and break room.

3. The Board could give little weight to Petitioner's comparable properties since they were not actual sales but assessed values. In addition, no adjustments were made. Respondent provided three closed sales and placed the most weight on Comparable Sale 1, the subject property. The Board heard testimony from Respondent that there was no indication of an exchange on the TD 1000, but did not hear evidence that Respondent confirmed this with either buyer or seller. The Board was most persuaded by Petitioner's testimony that there may have been a reason not to rely on this sale since the 1031 exchange may have had some affect on price.

4. The Board could give little weight to Petitioner's income approach since it lacked income and expense data, comparable rents and support for a capitalization rate.

5. Due to the relative newness of the subject improvement, the Board agrees with Petitioner that the cost approach should be considered. However, the Board could give little weight to Petitioner's cost estimate due to the lack of support for the costs that were presented, including land values. Respondent used a state approved cost service. The cost to convert the subject from a bakery to an office was not presented, but the Board has little reason to believe it would have significantly affected this approach. Respondent presented evidence of land sales to establish the subject's land value but did not address the possibility of a time adjustment for an appreciating market. Because of the support for an increasing market value, the Board believes a positive time adjustment for land would also be reasonable, especially due to the subject's proximity to downtown Crested Butte. The Board re-calculated Respondent's cost approach applying a time adjustment to the B-3 zoned land but not to the R-1 zoned land due to its small size and restricted use. The Board

concluded to a land value of \$388,921.00. Adding this land value to the Respondent's indicated improvement value of \$520,820.00 results in a total indicated value of \$909,741.00 based on the cost approach.

6. Respondent placed most weight on the market approach. Although the adjusted price range of Respondent's comparable sales is from \$292.00 to \$447.00 per square foot, \$239.00 per square foot was applied to the subject property. This amount is not supported and the Board believes it to be an arbitrary figure that was applied to the total square footage of the property, including the basement. The Board re-calculated the market approach using \$292.00 per square foot multiplied by the above grade area of 2,935 square feet. The Board was persuaded by Petitioner's estimate of \$59.00 per square foot for the basement based on commercial storage rates in the area, resulting in a total indicated value for the subject property of \$924,870.00.

7. After careful consideration of all the evidence and testimony presented, the Board concluded that the 2003 actual value of the subject property should be reduced to \$920,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$920,000.00.

The Gunnison County Assessor is directed to change his records accordingly.

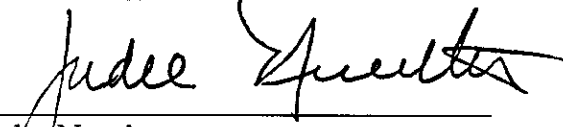
APPEAL:

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

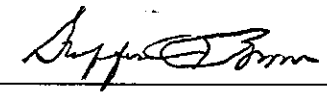
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 1st day of June 2004.

BOARD OF ASSESSMENT APPEALS



Judee Nuechter

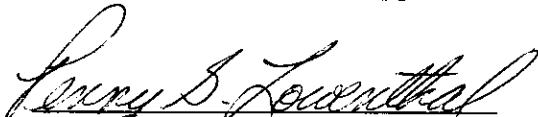


Steffen A. Brown

This decision was put on the record

JUN 01 2004

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



Penny S. Lowenthal

