

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROCKY MOUNTAIN MOTORISTS INC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket Nos.: 50736 & 50141</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 17, 2009 James R. Meurer and Lyle D. Hansen presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by David V. Cooke, Esq. Petitioner is protesting the 2007 and 2008 actual value of the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**4100 East Arkansas Avenue & 1451 South Ash Street, Denver, Colorado
(Denver County Schedule Nos. 06192-17-005-000 & 06192-17-006-000)**

The subject properties include a two-story class “C” commercial office building, constructed either in 1957 per Petitioner or in 1965 per Respondent. Subsequent additions were built per Petitioner in 1985 and 1999, and in 1998 per both Petitioner and Respondent. Respondent indicates that the building contains 23,625 square feet on the main floor and 22,199 square feet on the second floor for a gross building area of 45,824 square feet above ground. The building has a basement area containing a total of 18,346 square feet. The basement has a finished lunchroom and conference room with additional area utilized as storage space. There are two lot parcels containing a total of 99,356 square feet. Zoning is B1. The additional land area has parking improvements on site.

Petitioner contends that Respondent did not consider current market conditions; that Respondent’s sales had improper adjustments; that Respondent’s income approach does not consider

current market leases nor capitalization rates; and Respondent did not give consideration to the ongoing stigma and liability attributable to the current contamination remediation.

Respondent contends that reports and engineering studies provided by Petitioner along with an opinion from the Colorado Department of Health indicate that the subject properties are not materially affected by the known benzene plume or have already had remediation.

Petitioner presented the following indicators of value:

Market:	\$2,454,760.00
Cost:	n/a
Income:	\$1,790,986.00

Based on the market approach, Petitioner presented an indicated value of \$2,454,760.00 for the subject properties.

Petitioner presented three comparable sales ranging in sales price from \$1,600,000.00 to \$7,650,000.00 and in size from 28,821 to 60,814 square feet. The three sales ranged in sales price from \$55.52 to \$125.79 per square foot. After adjustments were made, the sales ranged from \$35.22 to \$58.53 per square foot.

Petitioner presented no cost approach.

Petitioner presented an income approach to derive a value of \$1,790,986.00 for the subject properties.

Petitioner concluded a rental rate of \$11.00 per square foot for his concluded 44,632 square feet on the first and second floor office area and a rental rate of \$2.00 per square foot for his concluded 16,931 square feet of basement area. Petitioner applied a vacancy allowance of 5%; management fee at 5% of effective gross income; office expense at \$5.00 per square foot; warehouse expense at \$0.85 per square foot; and operating, maintenance, reserves, and replacements at 5% resulting in a net operating income of \$212,411.00. Petitioner applied a capitalization rate of 11.86%.

Petitioner is requesting a 2007 and 2008 actual value of \$1,800,000.00 for the subject properties.

Respondent presented the following indicators of value:

Market:	\$4,264,100.00
Cost:	\$3,439,500.00
Income:	\$4,207,100.00

Based on the market approach, Respondent presented an indicated value of \$4,264,100.00 for the subject properties.

Respondent presented four comparable sales ranging in sales price from \$1,600,000.00 to \$7,650,000.00 and in size from 26,485 to 60,506 square feet. The four comparable sales ranged in sales price from \$60.41 to \$126.43 per square foot. After adjustments were made, the sales ranged from \$65.00 to \$82.18 per square foot.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject properties of \$3,439,500.00.

Respondent presented four comparable site sales ranging in sales price from \$367,500.00 to \$853,362.00 or \$8.35 to \$15.86 per square foot. After adjustments were made, the sales ranged from \$10.02 to \$13.48 per square foot. Respondent concluded a site value of \$993,600.00 or \$10.00 per square foot.

Respondent concluded a replacement cost new less accrued depreciation for the improvements of \$2,445,900.00. Respondent gave some weight to the cost approach as an indication of value but concluded that the income approach appears reliable and supports the market approach to value.

Respondent used the income approach to derive a value of \$4,207,100.00 for the subject properties.

Respondent concluded a rental rate of \$12.00 per square foot for the 45,824 square feet on the first and second floor office area and a rental rate of \$4.00 per square foot for the 18,346 square feet of basement area. Respondent applied a vacancy rate of 10% and operating expenses at 25% of effective gross income resulting in a net operating income of \$420,709.00. Respondent applied a capitalization rate of 10%.

Respondent assigned a total actual value of \$4,102,500.00.00 to the subject properties for tax years 2007 and 2008.

Sufficient probative evidence and testimony was presented to prove that the tax year 2007 and 2008 valuation of the subject properties was incorrect.

Petitioner concluded a negative adjustment of 25% to comparable sales in the market approach and a 2% increase in the capitalization rate in the income approach to reflect the negative impact of underground contamination on the marketability of the subject. Petitioner gave no market support for this adjustment and the Board concluded that the adjustment was not warranted. The Board concluded that the existing underground contamination had no measurable negative impact upon the value of the properties. This conclusion was based upon the No Further Action Letter issued by the Department of Labor and Employment dated June 7, 2005 addressed to Paul Zulauf.

The Board placed greater weight upon the income approach in order to derive an indication of value.

The Board relied upon the gross building area figures presented by Respondent. Petitioner's witness testified that his gross building area figures were taken from a set of plans rather than from

actual building measurements. The building is occupied by the owner and has a total net rentable area above ground of 45,824 square feet and a net rentable area in the basement of 18,346 square feet.

The Board placed greater weight upon Petitioner's lease comparables for the rental rate. Although the Board understands the requirement for confidentiality by Respondent regarding certain information and documents, the Board placed minimal weight on comparables or a competitive set that was not disclosed and/or independently verified. Consequently, the Board placed minimal weight upon Respondent's rent comparables.

After review of Petitioner's office lease comparables ranging from \$10.50 to \$13.75 per square foot on a full service basis, the Board concludes to a rental rate for the office area of \$12.00 per square foot.

As to the rental rate for the warehouse space, Petitioner indicated that competing warehouse space lease rates ranged from \$2.01 to \$2.35 per square foot on a triple net basis and concluded a rental rate of \$2.00 per square foot. Since Petitioner's income approach was accomplished on a full service basis, the use of lease rates on a triple net basis was not considered appropriate. The Board concluded a warehouse space rental rate of \$3.00 per square foot.

Respondent did not provide sufficient evidence to support the conclusions of vacancy rate, operating expense ratio, or capitalization rate. The Board found Petitioner's vacancy rate and values for management fees, office and warehouse expenses, and operating expenses to be reasonable. The Board concluded a capitalization rate of 9.86% reflecting a market-extracted rate of 8.0% based upon Petitioner's capitalization rate analysis plus 1.86% for real property taxes.

The Board concluded that the 2007 and 2008 total actual value of the subject properties should be reduced to \$2,926,146.00.

ORDER:

Respondent is ordered to reduce the 2007 and 2008 total actual value of the subject properties to \$2,926,146.00.

The Denver County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

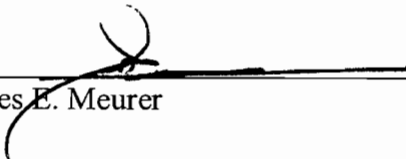
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

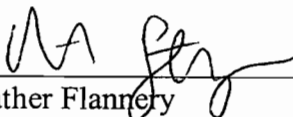
DATED and MAILED this 16th day of March 2010.

BOARD OF ASSESSMENT APPEALS


James E. Meurer


Lyle D. Hansen

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


Heather Flannery

