

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 51530 &
51380**

Petitioner:

GARY BUEHLER & SUE LARSEN,

v.

Respondent:

**BOULDER COUNTY BOARD OF COMMISSIONERS
& BOULDER COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 21, 2009, Debra A. Baumbach and Louesa Maricle presiding. Petitioners appeared pro se. Respondent was represented by Michael A. Koertje, Esq. In Docket No. 51530, Petitioners are requesting an abatement/refund of taxes on the subject property for tax year 2007; in Docket No. 51380, Petitioners are protesting the 2008 assigned value of the subject property.

The Board consolidated Docket Nos. 51530 and 51380 for purposes of the hearing.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**304 East Simpson Street, Lafayette, Colorado
Boulder County Account No. R0021300**

The subject property is located in the historic Old Towne area of the City of Lafayette, Colorado. The improvements consist of a one-story, wood-frame commercial building constructed in approximately 1891 with a two-story rear addition built in the 1990s. The improvements are situated on a 7,000-square-foot lot and the property is zoned B-1, Community Service Business District. The original structure is 1,292 square feet in size, has 12-foot ceilings, and hardwood floors for most of the space. It has a half bathroom (toilet and sink). It is occupied by the Petitioners' photography business. A trap door provides access to a cellar with six-foot high ceiling that houses the subject property's mechanical systems. Each floor of the two-story addition has 1,034 square feet. The space

on the ground floor has one large room and a small enclosed office space. It has drywall finish, carpeting, and a half bathroom. The second floor is also finished and consists of one large area, two small offices and a full bathroom. Exterior stairs and entrances on the south and east sides of the building provide access to the first and second floors of the two-story addition, which does not have street frontage.

Docket No. 51530:

On the assessment date, January 1, 2007, both floors of the rear addition were occupied by a preschool tenant. The subject property was classified as commercial.

Respondent, the Boulder County Board of Commissioners, assigned a value of \$298,000.00 for tax year 2007, but is recommending a reduction to \$250,000.00. Petitioners are requesting a value of \$204,000.00.

Petitioners did not present analysis using the cost, market, or income approaches to value. Petitioners also did not present comparable sales or leases. Petitioners' reasons for appeal are that the subject neighborhood has been in decline over the past several years, including the base period, income for the subject property has declined, and the assessment for the subject is higher than assessments for neighboring properties. The physical condition of the subject property has also been affected by water damage caused by roof damage at the adjoining building that shares a wall with the subject. An example given of the neighborhood decline is the commercial property across the street from the subject that has been vacant for an extended period and is now boarded up because of previous problems with squatters. Economic problems within the immediate neighborhood have made it difficult to attract tenants for the subject. Petitioners have examined the county's actual values for other nearby properties and have found them to be lower than the value assigned to the subject.

Respondent's witness, Mr. Samuel M. Forsyth, Certified General Appraiser with the Boulder County Assessor's Office, presented the following indicators of value for tax year 2007:

Cost:	Not used
Market:	\$268,800.00
Income:	\$231,300.00

Respondent did not present the cost approach to value.

For the tax year 2007 analysis, Respondent's witness presented a market (sales comparison) approach to value including three comparable sales ranging in sale price from \$150,000.00 to \$412,000.00 and in size from 1,212 to 2,445 square feet. Sale 2 is the only sale of the three that occurred during the base period. Sales 1 and 3 occurred in 2001 and 2003, respectively. Respondent's witness testified it was necessary to use earlier sales because of the lack of sales data during the base period for properties similar to the subject. Respondent's witness considered qualitative rather than quantitative adjustments for each sale. Therefore, the witness did not conclude to adjusted sale prices for the comparables. Respondent's witness concluded that one of the comparable sales is inferior to the subject and two are superior. Using this approach, Respondent's

witness concluded to a market value of \$80.00 per rentable square foot, toward the low end of the range indicated by the comparable sales. The resulting value by the market approach is \$268,800.00.

Respondent's witness presented an income approach with an indication of value of \$231,300.00 for the subject property. Direct capitalization methodology was used. Summary data from the county's confidential records regarding seven retail leases and five office leases during the base period were presented as support. Two of the retail leases presented indicated a range in rental rates of \$10.60 to \$11.00 per square foot on a triple net lease basis. The remaining five leases indicated a range in rents of \$4.00 to \$17.00 per square foot on a modified gross lease basis. Respondent's witness concluded to a modified gross rental rate of \$10.00 per rentable square foot. A lower estimated market rent of \$8.00 per square foot was estimated for the finished office area on the second floor of the rear addition. The first floor space of the rear addition was considered by Respondent's witness to be the least desirable space and a rent of \$5.00 per square foot was estimated for it.

Respondent's witness used a 10% vacancy and collection loss factor. An estimate of the modified gross operating expense of 22% of the effective gross income was used. The modified gross basis assumes that only a portion of the operating expenses for the property are passed through to the tenants. Respondent's witness estimated overall capitalization rates for two of the comparable sales based on the witness's estimates of stabilized operating income. This analysis produced indicated capitalization rates of 7.93% and 8.08%. The net operating income was capitalized at a rate of 8.00%.

Based primarily on the market approach with secondary emphasis on the income approach, Respondent's witness presented an indicated value of \$250,000.00 for the subject property for tax year 2007.

Petitioners used an equalization argument to support Petitioners' requested value of \$204,000.00. Once the actual value of the subject property has been determined, the Board can then consider an equalization argument if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were derived by application of the appropriate approaches to value and that each comparable was correctly valued. Because that evidence and testimony was not presented, the Board gave little weight to the equalization argument presented by Petitioners.

Respondent assigned a value of \$298,000.00 for tax year 2007. For the purposes of this hearing Respondent admits a value of \$250,000.00 for tax year 2007. Petitioners failed to meet their burden to show the new value is incorrect.

Docket No. 51380:

As of the assessment date, January 1, 2008, the preschool tenant had vacated the two-story rear portion of the property and the second floor space had been converted to use as a rental apartment. The subject property was classified as mixed-use property.

Respondent, the Boulder County Board of Equalization, assigned a value of \$250,700.00 for tax year 2008. Petitioners are requesting a value of \$204,000.00.

Petitioners did not present analysis using the cost, market, or income approaches to value. Petitioners also did not present comparable sales or leases. Petitioners' reasons for appeal are the same as described herein for Docket No. 51530, with one addition: Petitioners argued that the rental income from the apartment is significantly lower than if it could be rented as office space.

Respondent presented the following indicators of value for tax year 2008:

Cost:	Not used
Market:	\$269,300.00
Income:	\$253,700.00

Respondent's witness, Mr. Forsyth, did not present the cost approach to value.

For the 2008 analysis, Respondent's witness recognized the mixed-use status of the property based on the change in use of the second floor space to an apartment. Because of the change in use, Respondent's witness allocated 1,292 square feet of the total building space as retail space, 1,034 square feet as residential space, and the remaining 1,034 square feet as storage/warehouse space.

Respondent's witness presented a market approach to value the residential portion of the subject property. Three residential comparable sales were provided ranging in price from \$200,000.00 to \$225,000.00 and in size from 1,176 to 1,248 square feet. Adjustments were made to the residential comparables for changing market conditions (time), size, quality and condition, and other characteristics. After adjustments, Respondent's witness concluded to a value for the subject's residential space of \$95,000.00.

Respondent's witness presented a market approach to value the commercial portions of the subject property including the same three commercial building comparable sales described herein for Docket No. 51530. Respondent's witness again considered qualitative rather than quantitative adjustments for each sale. Therefore, the witness did not conclude to adjusted sale prices for the comparables. Using this approach, Respondent's witness concluded to a market value of \$75.00 per rentable square foot for the building's commercial space (retail and storage/warehouse) portion of the building. The resulting value for the commercial space by the market approach is \$174,300.00. The resulting combined value by the market approach is \$269,300.00.

Respondent's witness presented an income approach to value the commercial portion of the subject property with an indication of value of \$158,700.00. Direct capitalization methodology was used. The witness used the same data from the county's confidential records regarding seven retail leases and five office leases during the base period as support for the market rent for the commercial space. The resulting estimates of market rent were \$10.00 per rentable square foot for the retail space and \$5.00 for the storage/warehouse space. A 10% vacancy and collection loss factor and modified gross operating expense estimate of 22% of the effective gross income were used. The net operating income was capitalized at a rate of 8.00% resulting in an estimate of value for the commercial space of \$158,700.00. The resulting combined value for the subject property is \$253,700.00.

Based on the market and income approaches, Respondent's witness presented an indicated value of \$260,000.00 for the subject property for tax year 2008.

Respondent assigned an actual value of \$250,700.00 to the subject property for tax year 2008.

Petitioners presented insufficient probative evidence and testimony to prove that the tax year 2008 valuation of the subject property was incorrect.

Petitioners used an equalization argument to support Petitioners' requested value of \$204,000.00. Once the actual value of the subject property has been determined, the Board can then consider an equalization argument if evidence or testimony is presented, which shows the Board that the assigned values of the equalization comparables were derived by application of the appropriate approaches to value and that each comparable was correctly valued. Because that evidence and testimony was not presented, the Board gave little weight to the equalization argument presented by Petitioners.

Petitioners also presented an argument regarding the reduction in income to the property resulting from the change in use of a portion of the building from commercial to residential as support for a lower value. The residential portion of the subject property must be valued using the market approach to value. *See* Section 39-1-103(5)(a), C.R.S. Therefore, the Board gave no weight to the income evidence presented by Petitioners.

ORDER:

In Docket No. 51530, Respondent is ordered to reduce the 2007 actual value of the subject property to \$250,000.00.

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

In Docket No. 51380, the petition is denied.

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Sections 39-8-108(2) and 39-10-114.5(2), C.R.S.

DATED and MAILED this 25th day of November 2009.

BOARD OF ASSESSMENT APPEALS

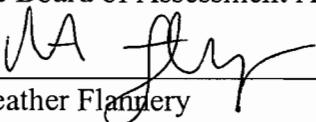


Debra A. Baumbach



Louesa Maricle

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


Heather Flannery

