

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.:
51779 & 51780

Petitioner:

ZAYAC PROPERTIES EDGEWATER LLLP,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 9, 2010, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by John Zayac, General Partner. Respondent was represented by James Burgess, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2006 and 2007.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**2207 Sheridan Boulevard, Edgewater, Colorado
Jefferson County Schedule No. 194279**

The subject property consists of a car wash structure with three self-service bays, one drive-through bay, mechanical room, and the underground water tanks necessary to support the car wash use. The improvements were constructed in 1987 on a 12,500 square foot site on the northwest corner of Sheridan Boulevard and 22nd Avenue. The gross building area is 2,106 square feet including the four bays and a mechanical room. The building construction consists of a concrete slab with floor drains, brick walls, a flat roof, and metal trim. Each bay has lighting and the building exterior has wall mounted lighting. The drive-through bay has brushless roll-over robot automatic wash equipment. The wash equipment in all the bays is coin operated. The property also has four vacuums and vending machines. All of the equipment is considered personal property and is not included in the value of the subject real property. Site improvements include concrete paved driveway, sidewalks, and parking areas, lighting, a concrete retaining wall along the east side of the site, a flag pole, and minimal amounts of landscaping.

During the hearing, the parties stipulated that the market approach was not relied on in the conclusions of value by either party. Therefore, the Board has not given weight to any sales information included in the documents presented.

Respondent assigned a value of \$190,850.00 for tax year 2006. Petitioner is requesting a value of \$128,171.10 for 2006.

Respondent assigned a value of \$172,500.00 for tax year 2007. Petitioner is requesting a value of \$129,365.30 for 2007.

Petitioner:

It is Petitioner's belief that incorrect methodology used by Respondent for the cost approach to value has resulted in overvaluation of the subject property, and that Respondent's exclusion of the income approach adversely affects the value conclusion.

Mr. Zayac testified that in using the cost approach to value, Respondent has not accurately reflected the quality of construction in the cost analysis, or the age and condition of the improvements in estimating physical depreciation. Respondent has also not considered physical, functional, or economic obsolescence affecting the property. The improvements have an actual age of 19 years for tax year 2006 and 20 years for 2007.

Mr. Zayac testified that the improvement cost estimates for 2006 and 2007 presented by an appraiser with the Jefferson County Assessor's Office at the Board of Commissioners (BOC) level were based on a "good" quality improvement classification, but he presented evidence to support his opinion that the improvements should be classified as "average" quality, according to the Marshall and Swift cost service guidelines. In addition to a higher cost per square foot factor, the good quality classification indicates a 30-year typical life expectancy for the improvements, but the average quality classification indicates a 25-year typical life. Therefore, the quality level classification selected for the analysis of the improvements affects both the gross cost and the calculation of depreciation.

In Petitioner's opinion, the cost analysis presented at the BOC level for each tax year employs a lower effective age than is reasonable because it did not adequately reflect physical deterioration and obsolescence affecting the improvements including functional and economic obsolescence, design deficiency, amateur construction, and other physical conditions. Mr. Zayac testified that the subject property has a significant amount of functional obsolescence because of the small sizes of the car wash bays that do not accommodate large vehicles such as some SUVs and trucks. The size and design of the structure, and the water tap size also do not allow Petitioner to upgrade the car wash equipment to newer models. Petitioner believes a deduction for economic obsolescence should be made to reflect declining economic conditions and greater competition from new car washes within five miles of the subject property. Petitioner cited declining operating income for the subject to support economic obsolescence.

Petitioner presented a cost approach analysis that started with the improvement cost estimate before depreciation presented at the BOC level. Mr. Zayac testified that the 37% physical depreciation deduction used in that analysis is too low because it uses a 30-year life for the

improvements and does not adequately adjust for physical condition. The improvements were 19 years old in 2006 and Petitioner concluded to an effective age of the property of 16 years. Petitioner presented adjustments for eight different forms of physical, functional, and economic depreciation, concluding to a total depreciation deduction of 69% for 2006. Petitioner concluded to a depreciated value of the improvements of \$57,656.90. Petitioner did not present or analyze land sales. Petitioner concluded to a land value of \$79,130.00, similar to, but not the same figure as Respondent's assigned land value. Petitioner presented a cost approach value for the subject property of \$136,786.90 for tax year 2006.

For tax year 2007, Petitioner's analysis again began with the improvement cost estimate before depreciation presented at the BOC level. Using the same methodology described above, Petitioner concluded to an effective age of 17 years for the 20 year old property and deducted a total of 70% for all forms of depreciation. Petitioner concluded to a depreciated value for the improvements of \$51,675.30. Adding Respondent's assigned land value of \$87,500.00, Petitioner's conclusion of total value for the property is \$139,175.30 for tax year 2007.

Though Mr. Zayac testified that he is licensed to use the Marshall and Swift cost estimator service, he did not perform his own cost analysis using the average quality classification. Instead, he relied on Respondent's original cost estimate that used a good quality classification, and then made a large combined deduction from the estimated cost to account for the construction quality, age, and numerous other forms of depreciation from all sources. The Board notes that the cost analyses for the improvements for the original BOC level and for the Board's hearing are based on replacement cost new, not reproduction cost new methodology. Some forms of functional obsolescence are automatically eliminated when replacement cost is used. Also, the Marshall and Swift guidelines for typical life of the improvements account for an average amount of normal deterioration and functional obsolescence, based on the appropriate quality of construction. Petitioner's use of the breakdown method to estimate depreciation from all sources has a high likelihood of double counting physical and functional depreciation attributable to some of the sources. The Board concludes that the justification for some of the eight adjustments made by Petitioner was not well defined or supported.

The Board also concludes that the percentage adjustments used were not well supported. Mr. Zayac testified that he developed many of the adjustments through conversations about methodology with an employee of the Marshall and Swift cost service. Petitioner cited declining income for the property as a basis for the deduction for economic obsolescence. However, the Board notes that the operating income history provided includes duplicate expense entries as well as expenses that are not included in accepted appraisal methodology for market valuation.

The Board concludes that Petitioner's cost approach analysis is flawed because it is based on an underlying cost estimate using a higher quality of construction than Petitioner believes is appropriate and then tries to compensate for that by layering on deductions for overlapping or unsupported forms of depreciation and obsolescence. The analysis results in a compounding of errors and does not produce a reliable indication of value for the property. Petitioner relied on the assigned value of the land presented at the BOC level, but did not present the land sales to support that value.

Petitioner presented an income approach analysis to derive a value of \$119,555.30 for the subject property for both tax years 2006 and 2007. As the basis for the income analysis, Petitioner used a rent rate from a lease executed by the property owner and a related business entity. The lease rate cited was described as being developed using estimates of the cost of the improvements and land value, capitalized at a rate sufficient to satisfy the profit motivation of the owner. Mr. Zayac testified that the lease was executed for Internal Revenue Service reporting purposes. Mr. Zayac testified that although the parties to the lease are related entities, the rent is deemed to be at market. Petitioner did not present any market rent comparables for arm's-length leases and agreed that leases are difficult to find because most car washes are owner operated.

Though the lease between related parties for the subject property may be useful for Internal Revenue Service purposes, it does not meet accepted appraisal standards for support for a market rent for the property. The Board concludes that insufficient arm's-length market evidence was presented to support the income approach value as reliable.

Petitioner presented the following indicators of value for tax year 2006:

Cost:	\$136,786.90
Market:	Not used
Income:	\$119,555.30

Petitioner gave equal weight to the values produced by his cost and income approaches and presented an indicated value for the subject property of \$128,171.10 for tax year 2006.

Petitioner presented the following indicators of value for tax year 2007:

Cost:	\$139,175.30
Market:	Not used
Income:	\$119,555.30

As for 2006, Petitioner gave equal weight to the values produced by his cost and income approaches and presented an indicated value for the subject property of \$129,365.30 for tax year 2007.

Respondent:

Darla K. Jaramillo of the Jefferson County Assessor's Office testified as a witness for Respondent. The witness testified that she considered all three approaches to value for the subject property and concluded that the income approach is unreliable because most similar car washes are owner operated. It is rare to find arm's-length leases, so she was unable to find adequate market rent comparables. Therefore, the witness did not present an income approach analysis. The witness presented raw improved sales information for car washes but determined that there was insufficient data to adequately develop the sales comparison approach. In the witness's opinion, the cost approach is the most reliable method to value this special use property.

For tax year 2006, the witness presented a cost approach to derive a value for the subject property of \$192,015.00. The witness presented three land sales ranging in size from 37,200 square feet to 40,405 square feet. Adjustments for location, access, frontage, and visibility were considered

for each sale. The various adjustments resulted in a 15% upward adjustment to each sale. The adjusted value indications range from \$7.77 to \$9.39 per square foot of land area. The witness concluded to a value for the subject site of \$9.00 per square foot, resulting in a land value of \$112,500.00. The witness used the state-approved Marshall and Swift cost service to estimate the replacement cost of the subject improvements. The witness used the average quality construction classification and concluded to an effective age of 13 years. The effective age was based on a field assessment of the property by another employee of the Assessor's office several years earlier, and when the witness visited the property in February 2010, it was her opinion that 13 years is still a reasonable estimate. The car wash improvements were depreciated at the rate of 40%; the site paving improvements were depreciated at the rounded rate of 80%. During testimony, the witness cited an error in the perimeter multiplier used in the cost figures in Respondent's Exhibit A and made verbal corrections to the figures shown. The witness testified that she visited the property and saw several large vehicles, including an SUV, using the car wash bays. She also interviewed car wash owners in the metro area concerning economic conditions during the base period and testified that they reported that the economic downturn did not occur until late 2008, after the base period. For these reasons, the witness determined that adjustments for functional and economic obsolescence were not justified.

The witness concluded that the average quality construction classification is appropriate for the subject improvements and testified that a 25-year life was used in the calculation of depreciation. However, the Board notes that the 40% depreciation used appears to be more consistent with a 30-year typical life, the life expectancy guideline for good quality construction, according to the Marshall and Swift cost service. Though the land sales used by Respondent are all significantly larger sites, the witness made no adjustment for size, which is generally an appropriate consideration for retail properties.

Respondent presented the following indications of value for tax year 2006:

Cost:	\$192,015.00
Market:	Not presented
Income:	Not presented

Based on the cost approach, Respondent presented an indicated value for the subject property of \$192,015.00 for tax year 2006.

For tax year 2007, the witness presented a cost approach to derive a value for the subject property. The methodology used is similar to that described for the tax year 2006 analysis. The witness concluded to an adjusted land value of \$170,000.00 or \$13.60 per square foot. Again, the witness used average quality classification for the cost estimate of the improvements, but concluded to an effective age for the improvements of 15 years. The witness again cited an error in the perimeter multiplier used in the cost figures in Respondent's Exhibit A and made verbal corrections to the figures shown. The witness concluded that additional deductions for functional and economic obsolescence were not warranted. The revised value by the cost approach given in testimony was \$242,271.00. However, the Board's calculations show a total value of \$248,571.00 including the depreciated value of the site paving and concrete.

Similar to the analysis for tax year 2006, the Board notes that the 48% depreciation used appears to be more consistent with a 30-year typical life, the life expectancy guideline for good quality construction, according to the Marshall and Swift cost service. Though the land sales used by Respondent are all significantly larger sites, the witness again made no adjustment for size.

Respondent presented the following indications of value for tax year 2007:

Cost:	\$248,571.00
Market:	Not presented
Income:	Not presented

Based on the cost approach, Respondent presented an indicated value for the subject property of \$248,571.00 for tax year 2007.

Because the appraised values presented by Respondent's witness are higher than the values assigned by Respondent for the subject property for both tax years, Respondent asks that the Board uphold the assigned values of \$190,850.00 for tax year 2006 and \$172,500.00 for tax year 2007.

Summary:

The Board concurs with Petitioner and Respondent's witness that the design and quality of construction of the subject improvements are consistent with average quality construction, as defined by the Marshall and Swift cost service guidelines for car washes. With the change in quality classification, the typical life expectancy should also have changed from 30 years to 25 years for the calculation of depreciation. Using the construction cost estimate before depreciation presented by Respondent's witness and deducting depreciation calculated using a 13-year effective age and 25-year typical life, plus the depreciated value of the site improvements presented by the witness results in a depreciated cost of \$65,055.00, rounded for tax year 2006 ($\$120,503.00 - 52\% \text{ depreciation} = \$57,841.44 + \$7,213.00 = \$65,054.44$). Petitioner concluded to the land value assigned at the BOC level, but did not present the land sales to support that value. Respondent presented an analysis to support a higher value for the land of \$112,500.00, but did not present the sales or analysis to support the original assigned value. Petitioner may seek review of only the total value assigned by Respondent, and not the component parts of that total value. *See Cherne v. Bd. of Equalization of Boulder County*, 885 P.2d 258, 259 (Colo.App. 1994). Under these conditions, the Board does not have adequate supporting evidence for Petitioner's conclusion of land value of \$78,130.00. Therefore, the Board has relied on the land value presented by Respondent's witness in the hearing of \$112,500.00. Adding this land value of \$112,500.00 results in a total value for tax year 2006 of \$177,554.00, rounded to \$177,550.00. Using the same methodology for tax year 2007 results in a value for the improvements of \$61,893.00, rounded ($\$138,982.00 - 60\% \text{ depreciation} = \$55,592.80 + \$6,300.00 = \$61,892.80$). Adding the land value presented by Respondent's witness of \$170,000.00 results in a total value for tax year 2007 of \$231,893.00, rounded to \$231,890.00.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2006 valuation of the subject property was incorrect based on the average quality construction classification and a 25-year typical life of the improvements for that classification.

The Board concludes that the 2006 actual value of the subject property should be reduced to \$177,550.00.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2007 valuation of the subject property was incorrect based on the average quality construction classification and a 25-year typical life of the improvements for that classification.

The Board concludes that the 2007 actual value of the subject property should be \$231,890.00. However, Respondent's assigned value is \$172,500.00 and the Board cannot adjust the value of the subject property to a value higher than assigned. *See* Section 39-8-108(5)(a), C.R.S.

ORDER:

In Docket No. 51779, Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2006 actual value for the subject property of \$177,550.00.

In Docket No. 51780, tax year 2007, the petition is denied.

The Jefferson 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 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).

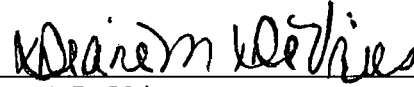
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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.

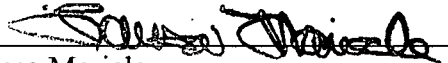
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 26th day of May 2010.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Louesa Maricle

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



Heather Flannery

