

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p><b>MICHAEL &amp; BARBARA DELMONICO,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 53507</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on April 27, 2011, James R. Meurer and Gregg Near presiding. Petitioners appeared pro se. Respondent was represented by Charles T. Soloman, Esq. Petitioners are protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**3236-3258 Federal Boulevard, Denver, Colorado  
County Schedule No. 0229131018000**

The subject is 23,300 square feet and is a vacant R2 zoned parcel improved for use as a parking lot for the adjacent property owned by the Petitioners. The Petitioners use the parking lot as a portion of their business as a reception hall. Portions of the parking lot are also leased to an adjacent property to the east known as The Gardens at Saint Elizabeth, a senior citizen's home.

Petitioner presented the following indicators of value:

Market:	\$250,00.00 - \$260,000.00
Cost:	Not applied
Income:	Not applied

Petitioners presented one comparable sale. No address was given other than Pecos Street. The comparable sale is a vacant, R2 zoned lot, containing 18,288 square feet. The property sold for \$253,369 in June 2008.

Petitioners indicated they purchased the subject property during the valuation period at a high price because it was necessary for their business. Petitioners had leased the property from Qwest for ten years prior to this purchase and indicated spending considerable time and effort in the maintenance of the property. Petitioners indicated they only became aware the property was available for sale by the presence of a for sale sign on the lot. Petitioners paid \$375,000 for the property in April 2006.

Petitioners questioned how Denver County valued the property because, prior to their ownership, the property had not been taxed. Petitioners stated their opinion that Respondent only relied upon their purchase to determine a value. Petitioners also questioned Respondent's classification of their property as commercial since the zoning was R2 and a similar property they also own that was zoned R3 and improved as a parking lot was later re-classified as residential following a protest.

Petitioners questioned the comparable sales used by Respondent. Petitioners stated they were unsure of the locations of the comparables because there were no addresses, and they did not have the resources to accurately position the sales. Comparable Sale 1 was described as "just vacant ground." Comparable Sale 2 was described as very small, situated next to a firehouse and a check cashing service, and may have been used for parking for the business. Comparable Sale 3 was located between a car wash and pot dispensary and may also have been used for parking.

Petitioners stated they have resurfaced and restriped the parking lot since their purchase.

Petitioner is requesting an actual value of \$250,000.00 to \$260,000.00 for the subject property for tax year 2009.

Respondent presented a value of 373,800.00 for the subject property for tax year 2009.

Respondent presented the following indicators of value:

Market:	\$373,800.00
Cost:	Not applied
Income:	Not applied

Respondent's witness, Timothy K. Muniz, Certified General Appraiser, presented three comparable sales ranging in sale price from \$160,000.00 to \$685,000.00 and in size from 8,730 to 21,700 square feet. After adjustments were made, the sales ranged from \$379,300.00 to \$485,000.00.

Respondent indicated the property was classified as commercial because of its use as a parking lot for Petitioners' building and a portion was leased to a neighboring business. Respondent testified he observed trucks and work vehicles parked on the portion leased to the neighbor.

Respondent stated the property was taxed prior to Petitioners' ownership but the taxation was determined by the State of Colorado since Qwest is a public utility with properties in several counties.

Respondent testified the subject property does not meet the required tests for classification as residential property as defined by the Assessors Reference Library.

Respondent applied adjustments to the three comparable sales for zoning and for size. Respondent concluded to a final value below the adjusted indications of the three comparables because the value determined by the mass appraisal process was reasonably similar, and it was adopted as the appropriate indication of market value.

Respondent adjusted Comparable Sale 1 downward by \$200,000 because it was zoned R3 and has different allowed uses, including development to a higher density. Respondent adjusted Comparable Sale 2 upward by \$267,100 because it was zoned B1. Respondent adjusted Comparable Sale 3 upward by \$74,300 because it was zoned B3. Respondent stated the adjustments were based on the per square foot price paid for Comparable Sales 2 and 3.

Respondent assigned an actual value of \$373,800.00 to the subject property for tax year 2009.

The Board is concerned with the adjustment process and comparable selection applied by Respondent. The comparables had gross adjustments of 29.2%, 167% and 24.4% respectively. Comparable Sale 2 is only 38% of the size of the subject. Respondent testified that both Comparable Sale 2 and 3 could not be developed with residential improvements and also stated that both properties would not appeal to the same buyer as the subject.

The Board was not convinced by Petitioners' position that the subject should be classified as residential despite an extended period of commercial use and Petitioners' statements that the parking lot was necessary for their business.

The Board recognizes Respondent determined a market value below the price paid in 2006 despite Petitioners' statements regarding improvements made to the parking lot since the purchase.

Accordingly, Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2009.

**ORDER:**

The petition is denied.

**APPEAL:**

**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).

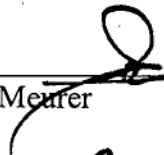
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

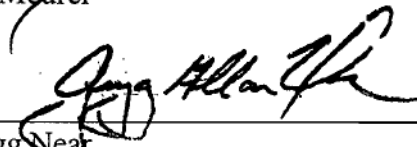
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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

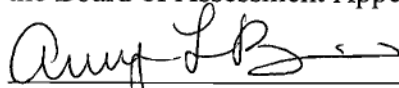
DATED and MAILED this 16 day of May 2011.

**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
Jim Meurer

  
\_\_\_\_\_  
Gregg Near

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

  
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Amy Bruins

