

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>TRM-MONTBELLO CORP,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 55054</b></p>
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 3, 2010, Karen E. Hart and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Max Taylor, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Docket No. 55054 was consolidated with Docket No. 55063 for purposes of the hearing only.

Subject property is described as follows:

**4850 Lima Street, Denver, Colorado  
Denver County Schedule No. 01144-11-010-000**

The subject is a 45,458 square foot multi-tenant warehouse property located in the Montbello submarket of the City and County of Denver. The subject is 100% leased to two tenants, is masonry construction, contains approximately 12% office finish, and was built in 1982. Lot size is 82,189 square feet or 1.89 acres resulting in a land-to-building ratio of 1.81:1. Zoning is I-2 in Denver.

Petitioner is requesting an actual value of \$1,350,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$2,169,500.00 for the subject property for tax year 2009.

Petitioner presented the following indicators of value:

Cost:	Not applied
Market:	\$1,500,114.00
Income:	\$1,345,116.00

Petitioner's witness, Mr. Todd J. Stevens, presented four comparable sales ranging in price from \$887,500.00 to \$2,340,000.00 and in size from 30,860 to 60,000 square feet, indicating a price range of \$27.69 to \$39.00 per square foot. After adjustments, the sales ranged from \$27.96 to \$39.00 per square foot. Petitioner concluded to a value of \$33.00 per square foot or \$1,500,114.00 for the subject via the market approach.

Petitioner's witness also presented an income approach to derive a value of \$1,345,116.00 for the subject property. Six lease comparables with rental rates ranging from \$2.75 to \$3.65 per square foot triple net were analyzed resulting in an applied lease rate of \$3.50 per square foot net of expenses. Petitioner's witness added common area reimbursement (CAM) income of \$1.40 per square foot and applied a vacancy rate of 10.0% to the subject. Deductions from income included a management fee of 3.0%, CAM without property taxes of \$31,627.00, and non-reimbursed operating, maintenance, and reserves of 15.0%. Petitioner concluded to an overall rate of 8.0%, then added an additional 1.94% as a load for property taxes.

Respondent presented the following indicators of value:

Cost:	\$2,265,300.00
Market:	\$2,317,800.00
Income:	\$2,330,900.00

Respondent used a state-approved cost estimating service to derive a market-adjusted replacement cost value for the subject property of \$2,265,300.00. Land value was estimated at \$4.75 per square foot.

Relative to the market approach, Respondent's witness, Mr. Richard Phinney, presented four comparable sales ranging in price from \$1,950,000.00 to \$2,735,000.00 and in size from 38,194 to 60,000 square feet, indicating a range of \$39.00 to \$51.47 per square foot. Respondent made no adjustments to the comparable sales and concluded to a value of \$50.00 per square foot, which equates to a value of \$2,317,800.00.

Respondent's witness also employed an income approach to support an opinion of value for the subject property. Nine lease comparables with rental rates ranging from \$3.65 to \$5.25 per square foot triple net were presented resulting in a concluded market lease rate of \$4.15 per square foot net of expenses. A vacancy and collection loss of 7.0% was applied to gross income and an operating expense deduction of 7.0% was used in the analysis. Mr. Phinney applied an overall rate of 7.0%, resulting in a value of \$2,330,900.00 via the income approach.

Mr. Phinney concluded to an actual value of \$2,300,000.00 for the subject property for tax year 2009 based on the market and income approaches with lesser weight given to the cost approach.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect.

The Board agrees with the parties and concludes that the greatest reliance should be placed on the income approach, with support from market sales. The Board finds Petitioner’s rental rate and overall rate prior to tax load to be supported by market evidence. However, the Board finds Petitioner’s deductions for vacancy loss and expenses to be excessive based on the data provided. The Board also concludes that since the rental rate is net of expenses including taxes, no tax load should be included in the overall capitalization rate. The value is recalculated by the Board as follows:

Gross Income	Net Rentable Area	45,458 sf @ \$ 3.50	\$ 159,103
Vacancy Factor	7%		\$ 11,137
Effective Gross Income			\$ 147,966
Management Fee	3%		\$ 4,439
Expenses/Reserves	5%		\$ 7,398
	Total		\$ 11,837
Net Operating Income			\$ 136,129
Overall Rate			8.00%
Indicated Value			\$ 1,701,607
	per square foot		\$ 37.43

After careful consideration of the testimony and exhibits presented in the hearing, the Board concludes that the 2009 actual value of the subject property should be reduced to \$1,701,607.00, which equates to approximately \$37.43 per square foot of building area.

**ORDER:**

Respondent is ordered to reduce the 2009 actual value of the subject property to \$1,701,607.00.

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 1<sup>st</sup> day of December 2010.

**BOARD OF ASSESSMENT APPEALS**

*Karen E Hart*

Karen E. Hart

*[Signature]*

James R. Meurer

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

*Amy LB*

Amy Bruins

