

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>414 CO LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 55219</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (BAA) on August 2, 2010, Louesa Maricle and Sondra W. Mercier presiding. Petitioner was represented by Layne F. Mann, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**414 N. Wilcox Street, Castle Rock, Colorado
Douglas County Schedule No. R0465437**

The subject is a 6,600 square foot automotive service garage that was built in 1917 and renovated in 1975. A second 960 square foot storage warehouse was built on the site in 2002 and is used for tire storage.

Petitioner presented the following indicators of value:

Market:	Not included
Cost:	\$532,286.00
Income:	\$684,000.00

Petitioner is requesting a 2009 actual value of \$684,000.00 for the subject property. Respondent assigned an actual value of \$1,013,745.00 to the subject property for tax year 2009.

Petitioner's witness, Stephen A. Evans, presented a cost approach to derive a market-adjusted cost value for the subject property. Mr. Evans presented 13 land sales that occurred in the extended base period, concluding to a value of \$18.00 per square foot for the site. Mr. Evans calculated the replacement cost new of the buildings as \$28,124.00 for a total indicated value of \$532,286.00 using the cost approach.

Petitioner presented an income approach to derive a value of \$684,000.00 for the subject property. Mr. Evans used the actual net rent for 2008 of \$47,880.00 and a capitalization rate of 7.0%.

Petitioner is requesting a 2009 actual value of \$684,000.00 for the subject property.

Respondent presented the following indicators of value:

Market:	Not Included
Cost:	\$1,014,000.00
Income:	Not Included

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,014,000.00. Respondent's witness, Robert D. Sayer, presented five land sales that occurred during the extended base period. Land sales prices ranged from \$15.80 to \$68.21 per square foot after adjustment. Mr. Sayer applied the extraction method to provide an additional indication of the value of the subject site. In the second approach, Mr. Sayer included four sales of buildings, deducting replacement cost new of the improvements to conclude to land value. This approach provided a range in value of \$32.43 to \$67.99 per square foot for the subject site. Respondent concluded to a value of \$36.00 for the subject site for a total land value of \$1,008,327.00. Adding a depreciated value of the improvements of \$5,418.00, Respondent concluded to a value of \$1,014,000.00 for the subject using the cost approach.

Respondent assigned an actual value of \$1,013,745.00 to the subject property for tax year 2009.

Petitioner contends that the subject should be valued under its current use, as a leased automotive repair facility, with the greatest reliance given to the income approach using the current lease.

Respondent contends that the highest and best use of the subject is no longer its current use. Respondent cites redevelopment in the downtown area of Castle Rock as evidence that the highest and best use of the subject is redevelopment. Respondent cites a previous decision issued by the BAA, *Two Long Brothers LLC v. Boulder County Board of Equalization*, Docket Nos. 40011 and 41073 (2003), as support in their valuation methodology for the subject.

The Board was convinced that Respondent's assertion that the subject should be valued as a redevelopment site was not supported by market data and therefore speculative. In *Board of Assessment Appeals v. Colo. Arlberg Club*, 762 P.2d 146 (Colo. 1988), the Court allowed properties

to be valued under their highest and best use if evidence was presented that the use was a reasonable future use. The Court held that, "Speculative future uses cannot be considered in determining present market value." While Respondent presented sufficient probative evidence that there were alternative uses that were legally permissible and physically possible, insufficient evidence was presented to support an alternative use that was financially feasible or would provide greater income to the subject. Without a clear indication of an alternative use as being financially feasible, Respondent's contention is found to be "speculative."

The Board finds that while use of the income approach would be appropriate for the subject, Petitioner provided insufficient evidence to show that the current lease agreement was representative of the market.

Consideration is given to the cost approach; however, the age of the subject (built in 1917) decreases the reliability of this approach.

The Board finds the improved sales presented by Respondent to be the most reliable indication of the value of the subject. Mr. Sayer included four sales of buildings, deducting replacement cost new of the improvements to conclude to land value. All four buildings remain in use, further indicating that redevelopment of the subject is speculative at this time. The sales ranged in price from \$160.37 to \$284.31 per square foot of building area. Sales 1, 2 and 3 are most similar for location but are all superior in use. Sale 4 has an inferior location but is more similar for use. These sales indicate a minimum value for the subject of \$1,200,000.00, above the value assigned.

Petitioner presented sufficient probative evidence and testimony to prove that valuing the subject at its highest and best use was speculative; therefore, incorrect. However, no corresponding change in value is indicated by the sales relied upon by the Board. The Board finds the 2009 actual value of \$1,013,745.00 to be correct.

ORDER:

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 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.

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 21 day of October 2010.

BOARD OF ASSESSMENT APPEALS

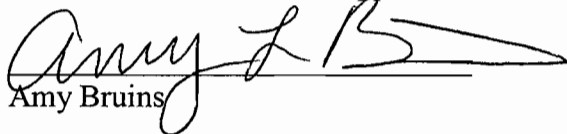


Louesa Maricle



Sondra W. Mercier

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



Amy Bruins

