

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>STANLEY L. AND EDITH SUE MCFADDEN,</p> <p>v.</p> <p>Respondent:</p> <p>CHAFFEE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 56063</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 15, 2011, Louesa Maricle and MaryKay Kelley presiding. Stanley L. McFadden appeared pro se on behalf of Petitioners. Respondent was represented by Jennifer A. Davis, Esq. Petitioners are protesting the 2010 actual value of the subject property.

Dockets 56063 and 56064 were consolidated for purposes of the hearing only.

As a preliminary measure, the Board addressed Respondent’s Motions for Sanctions. After weighing testimony, the Board does not believe sanctions are proper. Sanctions are an extreme measure. The Board recognizes Petitioners’ confusion about the appeal process and appraisal methodology and doesn’t feel their actions merit sanctions.

Subject property is described as follows:

**7689 West Highway 50, Salida, Colorado
Chaffee County Schedule No. R380706300002**

The subject property consists of a car wash and mini storage on a 43,560-square foot lot. It is one of two car washes in Salida and enjoys good visibility with Highway 50 frontage. The car wash has two automatic and four self-serve bays. The storage facility, with minimal electric and no heat, consists of 30 units (low grade construction).

Petitioners are requesting an actual value of \$550,000.00 for tax year 2010. Respondent assigned a value of \$657,251.00.

Petitioners' requested value of \$550,000.00 was based on the allocation for land and buildings. The Allocation of Values was determined by Petitioners' real estate agents and presented by the title company at the 2006 closing, purchase price being \$1,100,000.00, which consisted of the following: goodwill (\$300,000.00), defined as the existing customer base; non-compete covenant signed by the sellers (\$50,000.00); equipment, considered personal property (\$200,000.00); land (\$250,000.00); and buildings (\$300,000.00).

Respondent presented an indicated value of \$780,000.00, based on the following indicators:

Market:	\$952,500.00
Cost:	\$779,700.00
Income:	N/A

Respondent's witness, Richard A. Roberts, Licensed Appraiser with the Assessor's Office, presented a market approach for Petitioners' mini-storage and car wash. For the mini-storage, Mr. Roberts presented three comparable sales ranging in sale price from \$200,000.00 to \$245,000.00 and in price per square foot from \$45.38 to \$61.54. He relied on Sale 5 (\$200,000.00 or \$45.38 per square foot), the lowest of the three, to reconcile at \$114,358.00.

For the car wash, Mr. Roberts presented two comparable sales and one listing. He considered Sale 1, the 2006 sale of the subject property, to be most reliable. Adjustments were made for time, the non-compete clause, personal property, and excess land. Value was indicated at \$167.17 per square foot of \$952,000.00.

In applying the cost approach, Mr. Roberts derived a land value of \$435,800.00 by presenting three vacant land sales ranging in price from \$105,000.00 to \$712,000.00, in price per square foot from \$6.44 to \$11.37 after application of time adjustments, and in adjusted sale prices from \$9.69 to \$14.12 per square foot. He concluded to the median at \$10.51 per square foot or \$415,776.00 plus \$20,000.00 for four acres of excess ground for a total of \$435,800.00. Mr. Roberts applied cost data from the Marshall & Swift Handbook for the improvements and calculated physical depreciation to arrive at a total cost approach value of \$779,700.00.

Mr. McFadden disagreed with Respondent's estimate of land value, testifying that Sale 1 should have been disallowed because it involved asbestos remediation and leaking gas tank mitigation, the cost of which was carried forward to the purchaser. Mr. Roberts responded that Sale 1, dated July of 2007, was the second of two transactions, the first prior to remediation and mitigation and the second being vacant land.

The absence of income and expense data prevented Respondent from completing an income approach.

Mr. Roberts, discussing Petitioners' Allocation of Values, was unable to substantiate \$300,000.00 for good will. Respondent's Expedited Motion for Discovery sought support for this figure, but it was not provided by Petitioners.

Petitioners failed to present sufficient probative evidence and testimony to prove that the tax year 2010 valuation of the subject property was incorrect.

In cases involving commercial property, Colorado Statute requires consideration of the three approaches to value. Section 39-1-103(5)(a), C.R.S. Notwithstanding Petitioners' confusion regarding the appeal and appraisal processes, none of the approaches to value was provided. Additionally, neither testimony nor evidence was presented to convince the Board that Respondent's value was incorrect. Petitioners' requested value, based on the Allocation of Values, is neither market based nor supported by actual or market incomes and expenses.

The Board notes that Respondent valued the subject improvements on 39,560 square feet of land and 4,000 square feet as excess ground. Section 39-1-104(10.2)(a), C.R.S. requires that property be valued in its current use on the appraisal date. The subject property's site was 43,560 square feet and should have been valued as an integral unit. However, the Board notes that Respondent's compliance with Section 39-1-104(10.2)(a), C.R.S. would not have resulted in a lower assigned value.

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. (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).

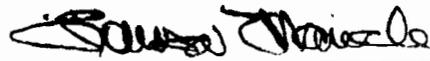
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

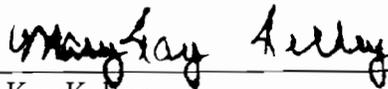
Section 39-8-108(2), C.R.S.

DATED and MAILED this 21 day of July 2011.

BOARD OF ASSESSMENT APPEALS



Louesa Maricle



MaryKay Kelley

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


Amy Bruins