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| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>NEIL ROSS,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF EQUALIZATION.</b></p> | <p><b>Docket No.: 57799</b></p> |
| <p><b>ORDER</b></p>   |                                 |

**THIS MATTER** was heard by the Board of Assessment Appeals on May 1, 2012, Amy J. Williams and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Michelle B. Whisler, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**100 South Spring Street, Aspen, Colorado  
Pitkin County Schedule No. R005262**

The subject property consists of a mixed-use commercial and residential building situated on a 3,000 square foot corner lot at Main Street and Spring Street on the eastern edge of the Aspen downtown commercial core. The original structure was a miner's cabin built in 1886; an addition was constructed in 1980 increasing the size to 3,100 gross square feet of heated space. The property was approved as the Goodheim and Ross Building Condominium in 1980. The building construction is wood frame with wood siding and asphalt shingle roofing. It has garden level, first floor, and second floor units and five on-site parking spaces. The building includes one 395 square foot residential unit and four commercial units ranging from 336 to 801 square feet. The residential unit is subject to rent control by the Aspen - Pitkin County Housing Authority (APCHA). Although the building is approved as condominium units, the property is owned and operated by Petitioner who occupies one of the commercial units. The improvements are in well maintained condition.

Petitioner is requesting an actual value of \$842,400.00 for the subject property for tax year 2011. Respondent assigned a value of \$1,288,400.00 for the property for tax year 2011.

Petitioner testified that he does not dispute the value assigned to the residential unit. However, Petitioner contends that the subject property has not been able to achieve the rents Respondent claims are market rates and Respondent has not adequately considered the vacancy in the property during the base period. Petitioner contends that although Respondent's Sale 5, a property purchased for redevelopment, is located across the street from the subject, it has different zoning that allows retail and restaurant uses not permitted for the subject. Petitioner testified that Respondent's claim that the property was listed for sale during the base period is inaccurate. There was no signed listing contract for the property. Petitioner testified that he did not consider the cost approach to value or the market approach because there have been no inquiries by potential buyers of the condominium units. Petitioner contends that the income approach is the most appropriate method to derive a value for the property. Petitioner presented his income approach analysis for the commercial units using potential gross rent based on existing gross and triple net lease rates as well as his experience renting the units, less his estimate of operating expenses. Petitioner testified that he did not include estimates for vacancy and collection loss or a management fee. Petitioner testified that a net income of \$48,132.00 is reasonable for the commercial units and also presented the property's tax return income and expense documents for 2009 and 2010 as support. Petitioner capitalized the net operating income at the 6.0% rate used by Respondent and concluded to a value for the commercial units of \$802,200.00. Adding Respondent's value of \$40,200.00 for the residential unit, Petitioner concluded to a value of \$842,400.00 for the property.

Respondent presented the following indicators of value:

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|---------|----------------|
| Market: | \$1,450,000.00 |
| Income: | \$1,156,000.00 |
| Cost:   | Not presented  |

Lawrence C. Fite, a Certified General Appraiser employed by the Pitkin County Assessor's Office as Chief Appraiser, testified for Respondent. Mr. Fite testified that he considered all three approaches to value, but concluded that the cost approach was not applicable because of the age of the improvements.

For the market approach, the witness presented four comparable sales of commercial condominium units that occurred between April 2008 and March 2010. The sales ranged in price from \$525,000.00 to \$780,000.00 and in size from 668 to 1,050 square feet. The witness testified that he considered adjustments to the sales including, but not limited to, changing market condition (a time adjustment), size, location, and quality of construction. The time adjusted sale prices ranged from \$666.00 to \$770.00 per square foot. After adjustments were made for other differences in comparison to the subject property, the sales ranged from \$599.00 to \$770.00 per square foot. The witness concluded to values of \$600.00 per square foot for the subject's garden level unit and \$650.00 for the above grade units for a total value of the commercial units of \$1,413,350.00. The witness testified that he relied on the value for the residential unit assigned by the APCHA of \$40,200.00. The witness concluded to a combined value for the residential and commercial units of \$1,453,550.00. As an additional test, the witness testified that he considered the sale of an improved property across the street from the subject that was purchased for redevelopment. The witness testified that this is a reasonable test of value because in his opinion, it is likely that the subject

property would be purchased for redevelopment where the overall property value is based on the underlying land. The property sold in May 2010 for \$3,100,000.00. The witness testified that he adjusted the sale price downward 55% for differences in lot size and zoning and concluded to an adjusted value for the property of \$1,395,000.00, which he considered the low end of the value for the property. The witness concluded to a rounded combined value for the property by the market approach of \$1,450,000.00.

The witness presented an income approach to derive a value for the commercial units. Mr. Fite testified that triple net leases are the most common in the Aspen office market and he relied on lease information provided by commercial property owners in response to commercial questionnaires mailed by the Assessor's office prior to the revaluation. The witness testified that he also considered available commercial property lease listings during the base period and interviews with commercial property managers and local commercial real estate agents. The witness testified that he used triple net rents of \$30.00 per square foot for the garden level unit and \$35.00 for the above grade units in the building based on rents for properties that are a similar distance from the Aspen business core and have similar neighboring uses as the subject property. The witness testified that he made deductions for vacancy and collection loss and for management operating expenses that would not be passed through to the tenants. The net income was capitalized at 6.0% indicating a value of \$1,115,330.00 to which the \$40,200.00 value of the residential unit was added to derive a total value for the subject property by the income approach of \$1,156,000.00.

The witness testified that he gave more weight to the market approach because the income approach value for the improved property is lower than his estimate of land value for the property. The witness concluded to a market value for the subject property of \$1,450,000.00. Respondent assigned a lower actual value of \$1,288,400.00 to the subject property for tax year 2011.

Petitioner failed to present sufficient probative evidence and testimony to show that the subject property was incorrectly valued for tax year 2011.

With regard to Petitioner's claim that Respondent's Sale 5, used to estimate the value of the subject property as a redevelopment site, has superior zoning relative to the subject, the Board concludes that Respondent's witness acknowledged the difference in the zoning and adjusted the sale for that factor. With regard to Petitioner's claim that Respondent's testimony is inaccurate that the subject property was listed for sale during the base period for approximately \$3,725,000.00 or \$3,750,000.00 (testimony by the parties about the reported listing price was inconsistent) because there was no signed listing contract, the Board finds that a signed listing contract is not required for a property to be marketed for sale. The Board finds that Respondent did not provide evidence to support the listing. However, the Board concludes that a price used for the purpose of marketing a property for sale is not proof of market value and the Board has not relied on a reported marketing price for the property. The Board finds that Petitioner's tax return net income documents for 2009 and 2010 do not represent market valuation analysis because they do not demonstrate that the lease rents are market rents and because the income potential for the commercial unit occupied by Petitioner is excluded. Petitioner's income approach analysis relies, in part, on actual leases at the subject property and the 2011 Commercial Questionnaire sent to Petitioner by the Pitkin County Assessor was presented as evidence of the lease terms. The Board finds that the lease terms shown

on the questionnaire for three of the commercial units are after the base period for tax year 2011. The Board finds that Petitioner did not present other market lease support for his conclusion of rents for his income approach analysis. The Board concludes that Petitioner's evidence and testimony failed to support a lower value for the property and failed to demonstrate that Respondent's assigned value is incorrect.

**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 16th day of May 2012.

**BOARD OF ASSESSMENT APPEALS**



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Amy J. Williams

*Louesa Maricle*

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Louesa Maricle

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

*Milla Crichton*

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Milla Crichton

