

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SOUTHWEST PROPERTIES OF PUEBLO LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PUEBLO COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 60471</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 19, 2012, Gregg Near and Debra A. Baumbach presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Daniel C. Kogovsek, Esq. Petitioner is requesting an abatement/refund of taxes on the subject properties for tax years 2009 and 2010.

Subject properties are described as follows:

**2600 West US Highway 50, Pueblo, Colorado
2680 West US Highway 50, Pueblo, Colorado
Pueblo County Parcel Nos.: 05-140-14-002 & 05-140-14-001, respectively**

The subject properties consist of an automobile dealership located off Highway 50 in Pueblo, Colorado. Parcel No. 05-140-14-001 improvements include a modular building consisting of 1,960 square feet located on a 1.48 acre site. The improvements on Parcel No. 05-140-14-002 include a sales room office consisting of 3,696 square feet, with an attached 1,584 square foot garage area, located on a 2.49 acre site.

Petitioner is requesting an actual value of \$224,256 for Parcel No. 05-140-14-001 for tax years 2009 and 2010 and Respondent has assigned an actual value of \$888,933 for tax years 2009 and 2010. Petitioner is requesting an actual value of \$625,316 for Parcel No. 05-140-14-002 for tax year 2010 (2009 value of Parcel No. 05-140-14-002 is not a part of this appeal) and Respondent has assigned an actual value of \$777,998 for tax year 2010.

Petitioner, Mr. Michael Zavislan, owner and manager of Southwest Properties of Pueblo LLC, testified that he purchased the property at 2680 West US Highway 50 after learning of a possible eminent domain acquisition of the property where he had been operating his car dealership at the time.

Mr. Zavislan testified that he was contacted by the president of the bank that owned the property located at 2680 West US Highway 50 about a possible purchase. Mr. Zavislan contended that he overpaid for the subject property as it did not appraise at the purchase price value and he could not obtain conventional financing from the bank. Petitioner was only able to obtain partial financing of the purchase price from the bank. He stated that he felt under duress to purchase the subject because of the threat of losing his previous dealership due to an impending eminent domain action.

Mr. Zavislan testified that he purchased the second site at 2600 West US Highway 50 as part of an expansion plan. Previously, the property had been operating as a satellite office for an unrelated car dealership. During 2010, both of the subject properties were being used as one unit under the 2600 West US Highway 50 address.

Petitioner's witness, Mr. Mike Shafer, President of the with Property Tax Refund Consultants, LLC, presented the following indicators of value for Parcel No. 05-140-14-001:

Cost: \$224,256
Market: N/A
Income: \$733,000

Mr. Shafer presented a cost approach, concluding to a value of \$224,256. There were five land sales within the base period that were relied on in valuing the land component. After adjustments, an indicated land value of \$145,055 was concluded. An improvement value of \$79,201 was derived from the Marshall and Swift Valuation Service.

Mr. Shafer testified that there was only one sale of an auto sales building that occurred during the base period and the market approach was not relied upon.

Mr. Shafer presented an income approach to derive a combined value of \$733,000 for both schedule numbers. A rental rate of \$16.00 triple net based on market leases was indicated. Vacancy and collection loss was estimated at 10%, expenses at 10% and a capitalization rate of 10% was applied. The income approach was used only as a test of reasonableness and most weight was placed on the cost approach.

For Parcel No. 05-140-14-002, Mr. Shafer relied on the same indicators of value with respect to the market and income approaches for tax year 2009. An indicated value of \$625,316 based on the cost approach was concluded. The same five land sales were used in valuing the land component. After adjustments, an indicated land value of \$216,928 was concluded. An improvement value of \$408,388 was derived from the Marshall and Swift Valuation Service.

Mr. Shafer testified that he placed most reliance on the cost approach to value the subject properties.

Respondent's witness, Ms. Sara J. Grein, Certified Residential Appraiser, presented the following indicators of value for Parcel No. 05-140-14-001 for tax years 2009 and 2010:

Cost: \$709,000
Market: \$1,020,000
Income: N/A

Respondent presented a cost approach, concluding to a value of \$709,000. Respondent relied on three land sales including the sale of the subject. A unit rate of \$8.00 per square foot was used concluding to a land value of \$515,744. Marshall and Swift Valuation Cost Calculations concluded to an improvement value of \$193,067, rounding to a total value of \$709,000.

Respondent presented a market approach with an indicated value of \$1,020,000. Respondent presented three comparable sales ranging in sale prices from \$1,020,000 to \$4,900,000. After adjustments were made, the sales ranged from \$504,256 to \$2,370,600.

Respondent presented the following indicators of value for Parcel No. 05-140-14-002:

Cost: \$778,000 (rounded)
Market: \$1,231,000
Income: \$N/A

Respondent presented a cost approach, concluding to a value of \$778,000. Respondent relied on five land sales. A unit rate of \$4.00 per square foot was used concluding to a land value of \$433,856. Using the Marshall and Swift Valuation Service, Respondent concluded to an improvement value \$344,142 rounding to a total value of \$778,000.

Respondent present a market approach with an indicated value of \$1,231,000. Respondent presented three comparable sales ranging in sales price from \$1,020,000 to \$4,900,000. After adjustments were made, the sales ranged from \$605,107 to \$3,448,145.

Ms. Grein placed most reliance on the market approach in valuing Parcel No. 05-140-14-001 and for Parcel No. 05-140-14-002 most reliance was placed on the cost approach.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly valued for tax years 2009 and 2010.

The Board did not find either the income or the market approaches to value as a reliable indication of value due to the limited number of sales available within the base period and insufficient income data presented. Therefore, the Board placed most weight on the cost approach.

In valuing Parcel No. 05-140-14-001, Petitioner used a base cost for the modular structure of \$39.56 per square foot and Respondent used \$88.72 per square foot. The Board concluded Respondent's value is high for a modular structure and Petitioner's base rate could not be identified, as the figures were not included on Respondent's cost sheet. The Board concluded to a base rate of \$59.60, based on the Marshall and Swift Valuation Service for a Class D, low cost structure. After additional cost multipliers, a base cost of \$65.76 per square foot was indicated. The Board applied an 8% depreciation rate and relied on Respondent's costs for asphalt and paving for a total improvement cost of \$376,000.

In determining the land component, the Board reviewed all the land sales that were presented by both parties. Petitioner relied on a larger number of sales indicating market trends. Respondent presented only two land sales in addition to the sale of the subject property. The Board concluded to a land value of \$4.00 per square foot. The Board was not convinced by Respondent's argument that the land value is higher for the subject parcel because of its location on a corner with a traffic light.

The Board concluded to total value of \$376,000 for tax years 2009 and 2010 for Parcel No. 05-140-14-001.

In valuing Parcel No. 05-140-14-002, the Board placed greatest weight on Respondent's cost approach. The Board was not convinced by Petitioner's argument that the garage area should be valued at a lower cost per square foot. Respondent applied a reasonable rate of depreciation and relied on a \$4.00 per square foot land value.

The Board concluded to a total value of \$777,998 for tax year 2010 for Parcel No. 05-140-14-002.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a value reduction for Parcel No. 05-140-14-001 to \$376,000 for tax years 2009 and 2010. The Board affirms Respondent's assigned value of \$778, 998 for Parcel No. 05-140-14-002 for tax year 2010.

The Pueblo 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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).

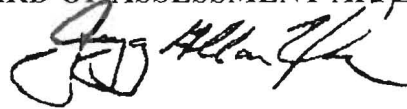
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 17th day of August, 2012.

BOARD OF ASSESSMENT APPEALS

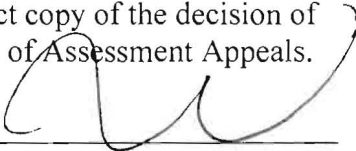


Gregg Near



Debra A. Baumbach

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



Milla Crichton

