

<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>MITCHELL BENEDICT III,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>LARIMER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 60472</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on July 2, 2012, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Tom Keyes, Agent. Respondent was represented by Linda Connors, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2009 and 2010.

The subject property is described as follows:

**156 & 160 E. Elkhorn Ave. Estes Park, Colorado  
Larimer County Schedule No. R1281011**

The property consists of a 6,471 gross square foot commercial retail building that was constructed in 1904 and remodeled in 1998. The building is wood frame, one and one half story, and has a leasable square footage of 5,507 square feet on the main level which excludes a 964 foot upper level storage area. The building was leased to two retail tenants as of the date of value. Lot size is 6,534 square feet and the building is considered to be in overall average condition.

Petitioner is requesting an actual value of \$1,000,000 for the subject property for tax years 2009 and 2010. Respondent assigned a value of \$1,300,000 for the subject property for tax years 2009 and 2010.

Mr. Keyes presented an income and market approach to support his opinion of value. Relative to the income approach, Mr. Keys used an actual 2007/2008 average net operating

income for the subject of \$55,275 and capitalized this net income at a 7.0% overall rate resulting in an indicated rounded value via the income approach of \$789,650.

Mr. Keyes also presented a market approach using three comparables sales. The sales prices of the comparables ranged from \$465,000 to \$1,500,000 and after adjustments, reflected values ranging from \$244.58 to \$276.43 per square foot. Mr. Keyes reconciled the two approaches at \$1,000,000 placing most emphasis on the income approach.

Mr. Keyes argued that the actual income and expenses of the subject should be given significant weight in the conclusion of value and that Respondent placed excessive emphasis on the sales included in Respondent's market approach.

Respondent's witness, Mr. Jon Cowling, a Certified General Appraiser with the Larimer County Assessor's Office, considered all three approaches to value and presented the following indicators of value.

Market:	\$1,498,000
Cost:	\$981,700
Income:	\$1,062,300

For the cost approach, Respondent used a land value of \$620,000 or \$10,000 per front foot. The improvement value was estimated at \$361,792 based on the Marshall and Swift cost tables.

Respondent's market (sales comparison) approach consisted of seven comparable sales in the Estes Park market. Prior to adjustments, sales prices ranged from \$415,000 to \$1,500,000 and subsequent to adjustments, the prices ranged from \$435,750 to \$1,650,000 or \$272 to \$389 per square foot. Major adjustments to the sales consisted of location and lot size.

In the income approach, Respondent used an \$18.00 per square foot triple net rental rate based on a rental survey to estimate the potential gross income for the subject. Vacancy and collection loss was estimated at 5.0% and expenses including reserves were estimated a \$9,186. The resulting net operating income was capitalized at an 8.0% overall rate resulting in a value of \$1,062,300.

Respondent considered all three approaches to value and reconciled at \$1,300,000 for the subject property.

Petitioner did not present sufficient probative evidence to show that the tax years 2009 and 2010 valuation of the subject property was incorrect.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Respondent's market and income approaches and the adjustments and variables used in these approaches accurately reflect the market value for the

subject property.

**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.

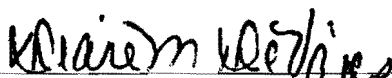
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.


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

**DATED and MAILED** this 18th day of July, 2012.



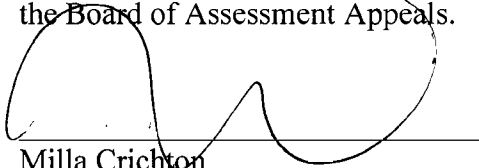
**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
Diane M. DeVries

  
\_\_\_\_\_  
James R. Meurer

I hereby certify that this is a true

and correct copy of the decision of  
the Board of Assessment Appeals.



Milla Crichton