

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MRKT, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>LARIMER COUNTY BOARD OF COUNTY COMMISSIONERS.</p>	<p>Docket No.: 60526</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 21, 2012, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Victor F. Boog, Esq. Respondent was represented by Linda K. Connors, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for 2011 tax year.

The parties agreed to stipulate to the expert witnesses and the exhibits.

Subject property is described as follows:

**1675 Fall River Road, Estes Park, Colorado
Larimer County Schedule No. 35224-31-001**

The subject is a resort/motel property containing 18 rental units including cabins, suites and standard rooms. The property includes an office, laundry and game rooms, pool, hot tubs and maintenance sheds.

The improvements were developed over a series of years from 1948 to 2008. The property contains 8.55 acres and is locally known as the Sunnyside Knoll Motel and Cabins.

Petitioner presented the following indicators of value:

Market:	\$2,038,400
Cost:	\$1,578,284

Income: \$1,556,804

Petitioner is requesting an actual value of \$1,661,300 for the subject property for tax year 2011.

Petitioner's witness, Daniel J. George, a Registered Appraiser, presented three comparable sales ranging in price from \$2,550,000 to \$3,500,000 and in size from 7,448 to 13,850 square feet. The subject, a January 2008 sale for \$2,800,000, was one of the sales considered. After adjustments were made, the sales ranged from \$1,815,600 to \$2,212,000. The indications were reconciled to a final value of \$2,038,400.

Mr. George adjusted each of the comparable sales downward by 20% for time. Sale 1, the subject, was adjusted downward an additional 9% for personal property and business value of the going concern. Sale 2 was adjusted similarly with an additional downward adjustment for a river location and an upward adjustment for a smaller site resulting in a total adjustment of -21%. Sale 3 has the same adjustments but was adjusted downward for a smaller site resulting in a total adjustment of -11%.

Petitioner's witness stated there were no reasonably comparable sales in this market within the 18-month base period. The sales reported had transaction dates from May 2007 to September 2008. Mr. George indicated the limited sales precluded analysis for a time trend. To adjust for time Petitioner's witness compared the income estimate the buyers obtained from their broker (\$495,000) with the average actual annual receipts collected from 2008 through 2010 (\$415,000). With this information Mr. George concluded to the 20% time adjustment applied to all the sales.

Petitioner presented a cost approach to derive a market-adjusted cost value for the subject property of \$1,578,284.

Mr. George presented one comparable land sale from August 2005. No adjustment was applied for time. Other adjustments were applied for larger size and greater utility due to more level topography. He concluded to \$1.24 per square foot of site area, or, \$463,600. The appraiser then applied cost figures from an unstated source to derive a cost new of \$1,663,707. The cost new was depreciated by 33% for a depreciated improvement value of \$1,114,684. The land value estimate was added to the above for a final opinion of value by use of the cost approach of \$1,578,284.

Petitioner's appraiser presented an income approach to derive a value of \$1,556,804 for the subject property.

Mr. George applied the net income provided by the owners. The effective gross income from rental operations ranged from \$162,257 in 2008 to \$178,237 in 2009. The appraiser applied a capitalization rate of 9% with a 2.8% tax rate and derived a value of \$1,556,804 by this approach.

Petitioner requests a value of \$1,661,300 and in so doing notes that is the value developed by Respondent's own appraiser.

Respondent presented the following indicators of value:

Market:	\$2,800,000
Cost:	\$1,563,700
Income:	\$1,661,300

Respondent assigned a value of \$2,300,000 for the subject property for tax year 2011.

Respondent's witness, Greg Daniels, a Certified General Appraiser, presented three comparable sales ranging in sale price from \$1,600,000 to \$3,200,000 and in size from 7,448 to 13,860 square feet. After adjustments were made, the sales ranged from \$1,564,000 to \$2,737,000. Insufficient recent sales required Mr. Daniels to consider sales that occurred in 2006 and 2007.

Mr. Daniels did not apply a time adjustment to the sales. He cited information from the state audit reports available at the time that preliminarily indicated the county was in compliance with market trending analysis.

Mr. Daniels adjusted two of the sales downward for river front locations and one sale downward for better condition and quality. After adjustments were applied the sales indicated a range from \$130,300 to \$144,000 per rental unit. A unit value of \$130,000 was adopted as appropriate. Mr. Daniels also considered the sale of the subject in 2008 for \$2,800,000. Citing Section 39-13-102, C.R.S., Mr. Daniels stated that due to the lack of disclosure from either the owner or the authorized agent relating to the subject's personal property values, the subject's sale price was presumed to be for real property only. Considering the subject transaction to be the best sale available, Mr. Daniels concluded to a value of \$2,800,000 by this approach.

Respondent's appraiser referenced a state-approved cost estimating service to derive a cost value for the subject property of \$1,563,700.

Mr. Daniels applied a land value to the subject of \$1.50 per square foot from mass appraisal data. An improvement value of \$1,100,067 is added to the land value of \$463,686 to derive a value of \$1,563,700 by this approach.

Respondent used the income approach to derive a value of \$1,661,300 for the subject property.

Absent information from Petitioner, Mr. Daniels relied upon income and expense information from county files and other data. An estimate of \$182,740 for net operating income was then capitalized by the middle of the range of capitalization rates related by a local publication. The resulting conclusion by the income approach is \$1,661,300.

Respondent assigned an actual value of \$2,300,000 to the subject property for tax year 2011.

Petitioner contends that Respondent has failed to properly consider appropriate deductions for business value and personal property. According to Petitioner, Respondent's value estimate by the market approach is overstated because there was no adjustment for a declining market. Petitioner contends that Respondent's appraiser relied upon time trending data that was not reasonably similar to the subject. Petitioner also questions why Respondent's value opinion exceeds both appraisers' opinion of cost new. Petitioner cited long standing appraisal theory that a buyer is not justified in purchasing an existing property when he can build a replacement for a lower cost.

Respondent contends that appropriate adjustments have been made to the subject's purchase price to represent personal property and the value of the going concern based upon Petitioner's statements. After adjustments, Respondent's opinion of value by the market approach was reduced to \$2,576,000. This did not result in a change in the final value opinion. The time trending adjustments used by Respondent's appraiser are those provided by state approved sources and this information is expected to be applied in normal practice.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2011.

The Board was not persuaded by arguments that Respondent incorrectly considered personal property and the value of the going concern as the required information was denied by both the property owner and the authorized agent despite reasonable requests.

The Board cannot accept the conclusion by Petitioner's appraiser that a 20% decline in collected receipts by the operator based on a broker's opinion of what might be correct represents a declining market. The appraiser uses this figure to apply an adjustment across the board to the comparable sales, regardless of their actual date of sale. The approach is flawed and the adjustment erroneous.

The Board places little reliance on Respondent's income approach noting that no effort was made to determine by analysis of the market whether the actual income was equal to, above or below market rates.

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). The Board finds that Petitioner did not meet its burden of proof. Based on the information presented, the Board must deny the petition.

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 6th day of September, 2012.



BOARD OF ASSESSMENT APPEALS

A handwritten signature in black ink, appearing to read "Diane M. DeVries".

Diane M. DeVries

A handwritten signature in black ink, appearing to read "Gregg Near".

Gregg Near

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

A handwritten signature in black ink, appearing to read "Milla Crichton".

Milla Crichton