

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>VITALE LLC.,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 60680</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 19, 2013, James R. Meurer and Debra A. Baumbach, presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2009 and 2010.

Subject property is described as follows:

**4991 Dry Creek Road
Centennial, Colorado
Arapahoe County Schedule Nos.: 2075-30-4-05-033 & 34**

The subject property is a single story retail center consisting of two buildings originally constructed in 1973. Building one has a gross building area of 4,176 and building two has a gross area of 2,800 for a total gross building area of 6,976. The property is used as a specialty food market. The front portion of the building contains retail merchandising and check out areas. The center section of the building contains general retail areas, display and refrigerated cases. The rear portion of the building contains food preparation areas, walk in coolers, office and storage areas. The building is situated on a 33,759 square foot site.

Petitioner is requesting an actual value of \$480,000 for tax years 2009 and 2010 and Respondent has assigned an actual value of \$1,100,000 for tax years 2009 and 2010.

Petitioner's witness, Mr. Anthony B. Rosacci, owner of Vitale, LLC, testified that in 1978 he subleased the property from 7-11 convenience market and opened Tony's Meats. At that time, the subject was owned by CMA. Eventually, the owner of the property took over the lease from 7-11 but Petitioner continued leasing the property over the next 30 years.

Mr. Rosacci testified that the original building was constructed in 1973, as a 7-11 convenience market. Throughout the years there were numerous additions to the original space and, as a result, the building's layout became very inefficient. According to Mr. Rosacci, the ability to attract new business is difficult because the subject is located in primarily residential area and the closest other retail is a mile and a half away.

Over the years, Mr. Rosacci became acquainted with the owner and offered to purchase the property. The owner agreed to sell the property, however there was no negotiating on the purchase price. Mr. Rosacci contends that he overpaid for the property but his decision to overpay was formed after weighing the potential loss in business caused by relocation and cost of moving expenses. He calculated overpaying for the property was offset by the long term advantages of owning the property. The purchase was completed in March of 2008 for \$1,150,000.

Petitioner's witness, Mr. Todd Stevens with Stevens & Associates Costs Reduction Specialists, Inc., presented the following indicators of value for the subject property for tax years 2009 and 2010:

Cost: \$482,161
Market: N/A
Income: N/A

Mr. Stevens presented a cost approach, concluding to a value of \$482,161. There were four land sales within the base period that were relied on in valuing the land component. After adjustments, an indicated land value of \$329,199 was concluded. An improvement value of \$191,545 was derived from Marshall and Swift Cost Valuation Manual based on stores and commercial buildings. Mr. Stevens applied an overall effective age of 37 years and applied 80% depreciation based on the original construction date of 1973. Mr. Stevens estimated a 25% functional obsolescence applied to the improvements and then added in the yard improvement costs of \$9,303 for a total value of \$482,162.

Mr. Stevens testified that throughout the years additional space was acquired to accommodate increasing business. The acquired space was retrofitted to the overall operation of the market. According to Mr. Stevens, based on the overall age of the building and diminished business flow, there are functional issues with the subject. In Mr. Stevens' opinion, there is also no other retail space within a mile and a half and most likely any potential buyer would probably purchase and demolish the existing structure for new construction.

Mr. Stevens testified that he considered both income and market approaches, however, based on the subject's unique design, utility and retrofitted space, he considered it as a special use and a

special purpose property. Therefore, after consulting with the Colorado Department of Property Taxation, he based his valuation on the cost approach.

Mr. Stevens contends that Respondent has overvalued the property by using inline multi-tenant space and larger box stores to derive the rental rate used in the income analysis. Mr. Stevens points out that no adjustments were made for any differences affecting the rental rates. According to Mr. Stevens, Respondent's market approach did not account for any differences and primarily relied on multi-tenant spaces for comparison. There was no cost approach performed and no functional obsolescence considered in either of the analyses.

Petitioner is requesting an actual value of \$480,000 for the subject property for tax years 2009 and 2010.

Respondent presented the following indicators of value:

Market: \$1,150,000
Income: \$1,050,000
Cost: N/A

Respondent's witness, Mr. Mark F. Kane, Certified General Appraiser with Arapahoe County Assessor's Office, presented a market approach. There were a total of nine comparable sales presented ranging in sales price from \$850,000 to \$1,850,000 and in size from 4,263 square feet to 10,900 square feet. One of the sales utilized was that of the subject property. There were no adjustments made for any differences. Respondent correlated to a mean of \$173.00 and a median of \$172.00 per square foot for the subject.

Mr. Kane testified that his main objective in the market approach was to determine if the sale of the subject property fits within the sales data set. He selected sales that bracketed the subject in age, size and utility. He did not want to determine adjustments or discard any sales in the analysis. Sale 9 was considered to be the most similar sale to the subject as it is a Mexican specialty market that has a limited kitchen area and delicatessen.

Mr. Kane contends Mr. Rosacci indicated the purchase price of the subject property was fair market value and appears to be bracketed well by the comparable sales used in the analysis. Mr. Kane testified that based on the sales analysis, the 2008 sale price of the subject appears to be the best indication of value.

Mr. Kane presented an income approach based on a triple net rental rate of \$14.00 per square foot. A vacancy and collection rate of 5% and expenses of 6% were estimated. The net operating income of \$87,214 was then capitalized at an overall rate of 8% for an indicated value of \$1,090.

In addition, the subject was leased during the time frame and was receiving approximately \$17.00 per square foot based on a modified gross lease. Mr. Kane performed the same analysis based on a modified gross lease rate of \$17.00 using the same estimated expenses, and vacancy and collection loss for a net operating income of \$105,903 and capitalized at an overall rate of 10.5% for

an indicated value of \$1,009,000. The value by the income approach was reconciled by both approaches for a concluded value of \$1,050,000.

Mr. Kane concluded the market leases presented represent a wide range of retail space and the actual use does not drive the rental rates as much as location, size and physical condition. The market leases presented support the lease rate in place.

Mr. Kane testified that based upon the inspection the subject property, there are two separate parcels utilized as one single economic unit. The property was found to be in good condition with no deferred maintenance and functioning as a specialty market. In addition, the subject did not appear to have any functional issues. There is an additional 660 square feet sublet to a third party tenant using the space for selling wine and spirits. The additional income was not allocated in the analysis.

Mr. Kane testified that he did not agree with Mr. Stevens' interpretation that a special use and special purpose property are interchangeable. He agreed that it was a special use property based on the use and unique design but it did not fit the definition of special purpose property. The design, layout and function are not specific to the use of that property.

Respondent's witness, Mr. Marcus Scott, MAI, Deputy Assessor with Arapahoe County Assessor's Office, testified that he agreed with Mr. Kane's contention that the subject property is a special use property and not a special purpose property. According to Mr. Scott, Petitioner's method in valuing the property is incorrect and there was no support for the adjustments made for functional obsolescence and depreciation. Mr. Scott determined that based on the information the Arapahoe County Assessor's Office had regarding the sale of the subject property there was nothing to indicate the sale was not market value or arms-length transaction and a good indication of value.

Respondent concluded to a value of \$1,100,000 for tax years 2009 and 2010 giving equal weight to the sales comparison and income approaches.

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

The Board finds Petitioner did not properly delineate the differences between special use and special purpose property in determining the appropriate methodology in the valuation. One of considerations in determining the difference is whether the property is available in the market and would be suitable for alternative uses. A special purpose property by nature of design and construction would be suitable for a single use and the improvements are unique to one specific use. While the Board was convinced the subject is a special use property, the Board was not persuaded it fit the requirements for special purpose category and placed minimal weight on the cost approach.

The Board found Respondent's income and market approaches to be the most supportable methods in determining the value. The Board concluded the income approach should be given the most weight in the final opinion of value. The market leases presented by Respondent in concluding to a rental rate were not adjusted to account for size, location or functional obsolescence. Although Respondent did not make any adjustments, the rental rate used is within the range.

The Board was convinced there should be some consideration given to functional obsolescence, due to the layout, special use and additions. Typically, functional obsolescence is accounted for in adjustments to rental rates within the income approach and adjustments to comparable sales within the sales comparison approach. The Board agrees that the subject is in good condition and functions well as a specialty market; however, due to the overall age, acquired space and layout, some functional issues exist. Petitioner did not present the Board with support for 25% adjustment factor and Respondent made no adjustments to comparables used. Therefore, the Board concluded to the lower end of the range in values taking into consideration the functional obsolescence for a value of \$1,050,000.

With regards to the sale of the subject property, the Board was convinced the sales price was within the range based on the sales that were presented. The Board agrees that there is a possibility Petitioner had motivation to pay slightly above market value based on consideration of the cost of moving, loss in business and capital expenditures invested in the property. There is an economic feasibility in offsetting the overall costs associated with relocation by paying slightly above market value for the subject. Further, the Board was convinced that the sale was an arms-length transaction.

ORDER:

Respondent is ordered to reduce the 2009 and 2010 actual value of the subject property to \$1,050,000.

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 24th day of April, 2013.

BOARD OF ASSESSMENT APPEALS

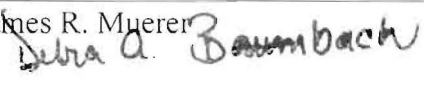


I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Crichton



James R. Muerer



Debra A. Baumbach

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