

<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 EQUALIZATION.</p>	<p>Docket No.: 61558</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 protesting the 2012 actual value of the subject property.

Subject property is described as follows:

**4991 E. Dry Creek Road
Centennial, Colorado
Arapahoe County Schedule No. 2075-30-4-05--035**

The subject property is a single story retail center originally constructed in 1973 consisting of gross building area of 6,976 square feet. 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 \$460,000 for tax years 2012 and Respondent has assigned an actual value of \$1,087,000 for tax year 2012 but is recommending a reduction in value to \$1,000,000.

Both parties stipulated to incorporate testimony from Docket 60680 for the purpose of this hearing.

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 subject's owner and approached the owner with an offer 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 year 2012:

Cost: \$468,424
Market: N/A
Income: N/A

Mr. Stevens presented a cost approach, concluding to a value of \$468,424. There were three land sales within the base period that were relied on in valuing the land component. After adjustments an indicated land value of \$312,317 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 39 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 yard improvement costs of \$12,448 for a total value of \$486,424.

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 the 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 adjustments for 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 \$460,000 for the subject property for tax year 2012.

Respondent presented the following indicators of value:

Market: \$1,050,000
Income: \$ 994,000
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 six comparable sales presented ranging in sales price from \$775,000 to \$1,225,030 and in size from 6,080 square feet to 9,000 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 \$134.00 and median of \$144.00 per square foot.

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. Most weight was placed on sales four through six. Mr. Kane concluded to \$105.00 per square foot for the subject and felt it was reasonable based on the sales.

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 8% and expenses of 6% were estimated. The net operating income of \$84,460 was then capitalized at an overall rate of 8.5% for an indicated value of \$994,000.

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 supported a \$14.00 triple net lease. The market during this time period was considered to be flat, there was a higher vacancy and collection loss and there was a higher cap rate.

Mr. Kane testified the original two parcels were combined into one single economic unit starting in 2012. 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 he did not agree with Mr. Stevens' interpretation that a special use and special purpose property are interchangeable. He agreed that the subject 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 \$1,000,000 for tax year 2012 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 year 2012.

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. Therefore, the Board concluded to the lower end of the range in values indicated in the income approach of \$994,000.

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to \$994,000.

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

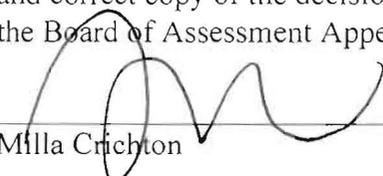


James R. Meurer



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