

<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>DEO VOLENTE II LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PUEBLO COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket Nos.: 61932 &amp; 61933</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 21, 2013, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Cynthia Mitchell, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2010 and 2011.

The parties agreed to consolidate Docket Numbers 61932 & 61933 and stipulated to the expert witnesses and to the admission of Petitioner’s Exhibits 1 and 2 and to Respondent’s Exhibits A and B.

Subject property is described as follows:

**322 E. Spaulding Avenue  
Pueblo West, Colorado 81007  
Pueblo County Schedule No. 06-122-02-006**

The subject property consists of a 2,400 square foot dental office with a 1,520 square foot unfinished basement. The building was constructed in 2009 on a 4.73 acre site in Pueblo West, a residential development suburban to the City of Pueblo.

Petitioner’s witness, Mike Shafer, with Property Tax Refund Consultants, LLC, presented the following indicators of value for 2010:

Market:       \$240,000  
Cost:           \$333,000

Income: \$236,500

Mr. Shafer presented the following indicators of value for 2011:

Market: \$240,000  
Cost: \$316,000  
Income: \$236,000

Mr. Shafer concluded to a value of \$240,000 for the subject property.

For the market approach, Mr. Shafer presented six comparable sales ranging in sale price from \$190,200 to \$380,000 and in size from 1,748 to 4,116 square feet. No adjustments were made and, as is, the sales ranged from \$61 to \$141 per square foot of above grade area. The sales were the same for both 2010 and 2011 tax years.

Mr. Shafer concluded to a mid-range indication of \$100 per square foot and determined a value by this approach of \$240,000. This value was applied for both years 2010 and 2011.

Mr. Shafer presented a cost approach to derive a market-adjusted cost value for the subject property of \$333,000 for 2010 and \$316,000 for 2011.

Mr. Shafer accepted the Assessor's opinion of \$141,900 for the land as vacant. By using the Marshall Valuation Service, he determined a Replacement Cost New of \$328,705 for 2010 and \$352,938 for 2011. RCN was reduced by 3.33% in 2010 and by 10% in 2011 for physical depreciation. Mr. Shafer then applied a total functional and economic adjustment of -40% in 2010 and -45% in 2011. After addition of the land value, the cost approach produced an indication of \$333,000 for 2010 and \$316,000 for 2011.

Mr. Shafer presented an income approach to derive a value of \$236,500 for the subject property in 2010 and \$236,000 in 2011. Mr. Shafer applied a modified gross income of \$17.00 per square foot for both years. The gross income was reduced by 15% for vacancy and an additional 25% for building expenses. The resulting net operating income was capitalized by an 11% rate for an indicated value of \$236,455 which was rounded to \$236,500 for 2010 and rounded downward to \$236,000 for 2011.

Petitioner is requesting a 2010 and 2011 actual value of \$240,000 for the subject property.

Respondent's witness, Ms. Sara VanGalder, a Senior Appraiser at the Pueblo County Assessor's Office, presented the following indicators of value for 2010:

Market: Not Applied  
Cost: \$499,610  
Income: Not Applied

Ms. VanGalder, presented the following indicators of value for 2011:

Market:	Not Applied
Cost:	\$504,099
Income:	Not Applied

Ms. VanGalder used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$499,610 for 2010 and \$504,099 for 2011.

Ms. VanGalder determined a Replacement Cost New of \$357,710 for 2010 and \$362,199 for 2011. RCN was reduced by 0% in 2010 and by 1% in 2011 for physical depreciation. 2011 RCN was increased by \$5,833 for the value of site improvements. Ms. VanGalder then applied a total functional and economic adjustment of 0% in 2010 and 0% in 2011. After addition of the mutually agreed upon land value, the cost approach produced an indication of \$499,610 for 2010 and \$504,099 for 2011.

Respondent assigned an actual value of \$499,610 to the subject property for tax year 2010 and \$504,099 for tax year 2011.

Petitioner contends that Respondent did not give proper consideration to the market and income approaches to value. The subject property is located in a unique area that is not the same as the City of Pueblo. The improvement is also a special purpose property that is subject to significant functional and economic obsolescence. The county's valuation results in a unit value from \$208 to \$210 per square foot and this is much higher than the values derived from comparable sales.

Respondent does not consider there are sufficient sale transactions or reliable income information to allow use of either the sales comparison or income approaches. The land value is agreed between the parties and Respondent's appraiser has applied the cost approach in the proper manner.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2010 and 2011 valuations of the subject property were incorrect.

The Board finds the two parties were very similar in their estimate of the RCN for the subject property. The variance was less than 9% in 2010 and less than 3% in 2011. The significant differences in the final values result from the application (or non-application) of an adjustment for functional and/or economic obsolescence.

The Board was compelled by Petitioner's comparable sales that, despite their flaws and the lack of any adjustments on the part of Petitioner's witness, clearly fall far short of a greater than \$200 per square foot market value.

The Board did not find that Petitioner's witness provided reasonable support for a combined 40% functional and economic adjustment in 2010 or a further jump to a 45% adjustment in 2011.

The Board also found little support from both parties for the relatively minor value changes reported for 2010 compared to 2011.

The Board was not convinced by either witness regarding physical depreciation. Petitioner's witness provided estimates clearly skewed in Petitioner's favor by application of an unreasonably short physical life estimate. Respondent's witness applied only a 1% adjustment in the second valuation year suggesting an unreasonably long physical life estimate.

The average of the RCN in 2010 used by both parties is \$343,208. For 2011, the average is \$357,569.

The Board has determined a 25% adjustment to be appropriate for total functional and economic obsolescence. Given a typical 40-year physical life for an average building, physical depreciation is estimated to be 2.5% in year 2011. The market value of the property in 2010 and 2011 is therefore:

<b>YEAR</b>	<b>2010</b>	<b>2011</b>
RCN	\$343,208	\$357,569
Physical Depreciation	0	(2.5%)
Functional/Economic Depreciation	(25%)	(25%)
Adjusted Building Value	\$257,406	\$259,238
Land Value	\$141,900	\$141,900
<b>MARKET VALUE</b>	<b>\$399,306</b>	<b>\$401,138</b>

The Board concludes that the 2010 actual value of the subject property should be reduced to \$399,306.

The Board concludes that the 2011 actual value of the subject property should be reduced to \$401,138.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2010 actual value for the subject property of \$399,306.

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2011 actual value for the subject property of \$401,138.

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 July, 2013.

**BOARD OF ASSESSMENT APPEALS**



*Debra A. Baumbach*

Debra A. Baumbach

*Gregg Near*

Gregg Near

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

*Milla Lishchuk*

Milla Lishchuk