BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 64124
Petitioner: **STIMATZE FAMILY TRUST,** v. Respondent: **MONTROSE COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 8, 2014, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Michael W. Johnson, Agent. Respondent was represented by Carolyn Clawson, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2012.

Subject property is described as follows:

2303 South Townsend Avenue
Montrose County Schedule No. 3767-344-30003
Account No. R0022074

and

2305 South Townsend Avenue
Montrose County Schedule No. 3767-344-30001
Account No. R0022072

Both properties are described as neighborhood shopping centers by the County. Both properties are accessed off S. Townsend Avenue, the primary commercial artery in the neighborhood. Building 2305 has the primary frontage on S. Townsend via a flag shaped lot and building 2303 has a cross access easement through the parking area for 2305. The buildings are situated between a Walgreens to the south and an Office Depot to the north.

Petitioner's agent, Robert Johnson, presented the following indications of value:

2303 South Townsend Avenue

Market:	$1,300,000
Cost:	$1,360,000
Income:	$ 933,337

2305 South Townsend Avenue

Market:	$ 790,000
Cost:	$1,160,000
Income:	$ 487,664

Petitioner's agent presented a cost approach containing five comparable land sales ranging in sale price from $250,000 to $628,267 and in size from 30,408 to 107,352 square feet. The land sales were the same for both properties. After adjustments were made, the sales ranged from $5.59 to $7.39 per square foot of site area.

Adjustments were made to the sales for existing improvements, property rights, market conditions and commercial visibility. Sale 2, located within the parking lot of Home Depot, was adjusted downward $70,000 for existing asphalt paving and then was adjusted upward 25% due to a deed restriction enabling the seller to approve any potential use. Sales 1, 3, 4 and 5, with sale dates in 2006, were adjusted downward 8% for a declining market during the valuation period. Sale 1 was considered 10% inferior to the subject in commercial visibility; Sale 2 was rated equal and Sales 3, 4 and 5 were adjusted downward 40% because they were superior in this respect. Mr. Johnson then gave greatest weight to Sales 1, 3 and 4 and concluded to a unit value of $5.60 per square foot and a total land value of $260,000 for 2303 and $445,000 for 2305.

Mr. Johnson referenced the Marshall & Swift cost estimator and concluded to a unit cost of $78.00 per square foot for each building and added cost for paving and concrete. For both buildings the total cost new, including 10% profit was then depreciated by 25%. For 2303 the conclusion by the cost approach was $1,360,000 (rounded) and for 2305 the conclusion was $1,160,000 (rounded).

Mr. Johnson developed a market approach consisting of four sales and one listing. During testimony Mr. Johnson agreed the listing was not acceptable as it was not under contract during the valuation period. Mr. Johnson also stated his Sale 3 was of limited reliability and he gave it little consideration. The remaining sales ranged from $750,000 to $1,220,000 in sale price and in size from 6,000 to 12,955 square feet. (NOTE: Petitioner's Sale 1, identified as 12,955 sq. ft. on pages 75 & 76 of Petitioner's Exhibit is actually 17,990 sq. ft. per MLS data in Petitioner's Exhibit, at page 83). Sales 2, 3 and 4 were adjusted downward 15% for a declining market. No other adjustments were applied and the sales indicated an adjusted range from $88.54 (Sale 3) to $126.85 (Sale 4). Mr. Johnson concluded to a unit value of $95.00 per square foot for both buildings and concluded to a value by the market approach for 2303 of $1,300,000 (rounded) and $790,000 (rounded) for 2305.

Petitioner's witness presented an income approach relying completely upon the data provided to him by the client. Three years of operating data was analyzed from which Mr. Johnson determined averages that were applied to a reconstructed operating statement. Mr. Johnson reported collected rents and "triple net accruals" from which he subtracted bad debts and write-offs to determine a potential gross income. A 5% vacancy was applied to this figure to determine effective gross income. For building 2303 expenses of 46% were reduced; for 2305 expenses of 63% were reduced. The net operating income for both properties was capitalized by 8.5% resulting in a value opinion of $933,337 for 2303 and $432,180 for 2305. (NOTE: Value is $487,664 on last page 144 of Petitioner's Exhibit 1).

Petitioner is requesting a 2012 actual value of $1,000,000 for building 2303 and $750,000 for building 2305.

Respondent presented the following indications of value:

2303 South Townsend Avenue

Market:	$1,500,000
Cost:	$1,328,000
Income:	$1,342,000

2305 South Townsend Avenue

Market:	$1,050,000
Cost:	$1,099,000
Income:	$1,054,000

Respondent's witness Brook Moyer, a Certified General Appraiser, presented a cost approach for building 2303 containing five comparable sales ranging in sale price from $250,000 to $850,000 and in size from 32,206 to 107,158 square feet. After adjustments were made, the sales ranged from $7.68 to $9.90 per square foot of site area.

Adjustments were made to the sales for existing improvements, property rights, market conditions, parcel size and commercial visibility. Respondent's Sale 3, the same transaction reported by Petitioner as Sale 2, was adjusted $19,000 for the existing asphalt and upward 30% for the seller's deed restriction. All the sales were adjusted downward for a declining market during the valuation period. Sale 3, the smallest, was adjusted downward for size and Sales 1, 4 and 5 were adjusted upward. Sale 4 and Sale 5 were adjusted upward 115% and 175% respectively for inferior locations. Mr. Moyer concluded to a unit value of $8.75 per square foot and a total land value of $415,000 (rounded).

Mr. Moyer referenced the Marshall & Swift Valuation Service and concluded to a unit cost of $64.56 per square foot for building 2303 and added for paving and concrete. The total cost for all items was depreciated 10% for a RCNLD of $913,349. With the addition of the land value estimate of $415,000 the conclusion by the cost approach was $1,328,000 (rounded).

For building 2305 Mr. Moyer considered the same five land sales in developing the cost analysis. After adjustments were made, the sales ranged from \$5.50 to \$6.68 per square foot of site area.

Similar adjustments were made to the sales for existing improvements, market conditions, parcel size and commercial visibility. In regard to property rights, Respondent's witness considered the subject to be inferior to all the sales except Sale 3 because the cross access easements and community use of the parking areas limit future expansion of the existing improvements. These sales were adjusted downward 25%. Sale 3, with a greater level of restrictions, was adjusted upward 5%. Mr. Moyer concluded to a unit value of \$6.15 per square foot and a total land value of \$500,000 (rounded).

Mr. Moyer referenced the Marshall & Swift Valuation Service and concluded to a unit cost of \$66.765 per square foot for building 2305 and added cost for paving and concrete. The total cost for all items was depreciated 10% for a RCNLD of \$599,416. With the addition of the land value estimate of \$500,000 the conclusion by the cost approach was \$1,099.000 (rounded).

Mr. Moyer developed a market approach for building 2303 consisting of four sales. The sales ranged from \$500,000 to \$1,700,000 in sale price and in size from 2,999 to 9,000 square feet. All the sales were adjusted downward for a declining market and for smaller building size. Sale 4 was adjusted upward for a smaller land to building ratio. Sales 1, 2 and 3 were superior locations and were adjusted downward. Sale 4, constructed in 1978, was adjusted upward compared to the subject's newer construction date. After all adjustments the sales indicated a value range from \$104.72 to \$123.31 per square foot of building area. Mr. Moyer concluded to a unit value of \$106.50 per square foot to determine a value opinion of \$1,500,000 (rounded) for building 2303.

For building 2305, Mr. Moyer considered the same array of sales. The adjustments were similar overall with Sale 3, at 9,000 square feet, no longer adjusted for size. After all adjustments the sales indicated a value range from \$117.04 to \$132.26 per square foot of building area. Mr. Moyer concluded to a unit value of \$126.50 per square foot to determine a value opinion of \$1,050,000 (rounded) for building 2305.

For building 2303 Respondent's witness presented an income approach using estimated rents from \$5.00 to \$8.00/sq. ft. on a triple net basis. A 10% vacancy estimate was applied and a 6% adjustment taken from the collected income for management and reserves. The resulting net operating income was capitalized at 6.55%. The indicated value by this approach for building 2303 was \$1,342,000.

For building 2305 Respondent's witness presented an income approach using estimated rents from \$8.00 to \$12.00/sq. ft. on a triple net basis. A 10% vacancy estimate was applied and a 6% adjustment taken from the collected income for management and reserves. The resulting net operating income was capitalized at 6.55%. The indicated value by this approach for building 2303 was \$1,054,000.

Mr. Moyer gave primary weight to the income and market approaches and concluded to a 2012 market value of $1,400,000 for building 2303 and $1,050,000 for building 2305.

Petitioner contends the subject is a non-traditional center with specialized operational objectives. The buildings have special attributes and features that have not been properly recognized by the County. The subject buildings are also burdened by a location without a significant anchor tenant.

Respondent contends Petitioner has relied upon inappropriate sales, has committed math errors and incorrectly applied expenses to income.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect.

The burden of proof is on Petitioner to show that Respondent's valuation is incorrect. *Bd. Of Assessment Appeals v. Sampson,* 105 P3d 198 (Colo. 2005). After careful consideration of the testimony and evidence presented at the hearing, the Board is not compelled by Petitioner's analyses and finds the conclusions to not be credible.

The Board had no confidence in Petitioner's cost approach finding the appraiser failed to follow proper procedure in, among others; use of the same land value for both buildings despite significant size differences and utility; the use of the same unit cost for two disparate buildings; the blanket application of depreciation to two different classes of property; and the inclusion of developer profit as appropriate in a declining market.

The Board also found Petitioner's market approach to contain a significant size error for the primary sale and the analysis failed to recognize and adjust for important property features such as a 22 year difference in improvement age or a 67,400 square foot difference in site size.

Finally, the Board determined Petitioner's income approach to be unacceptable as the appraiser presented a value in use analysis by simply applying the client's reported income and expenses without taking the further step to compare the operation of the subject to the marketplace.

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-nine 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-nine 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 6th day of October, 2014.

BOARD OF ASSESSMENT APPEALS

Gregg Near

Diane M. DeVries

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

Milla Lishchuk

SEAL

64124