

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MARK M. AND MARY S. KANG,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 64226 & 64677</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 9, 2014, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by David Wunderlich, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax years 2011 and 2012.

Docket number 64226 (2012) and 64677 (2011) were consolidated for the purposes of the hearing. The parties agreed to the admission of Petitioners' Exhibit A, C and D and to Respondent's Exhibit 1 and 2.

Subject property is described as follows:

**7150 W Colfax Avenue
Denver, Colorado 80214
Denver County Schedule No. 441231**

The subject property consists of a 90 unit motel originally designed as 91 units but with one unit converted to a guest laundry after the owner's purchase in 2002. The building is a two story walk up design with exterior room entries, a small lobby and an outdoor pool. The motel was constructed in 1963 and contains a total of 35,205 square feet on an "L" shaped lot containing 61,651 square feet. The site has frontage on both W. Colfax and Saulsbury Street. The motel's former restaurant building, now under separate ownership and vacant, is situated just east of the motel entrance and shares parking and circulation. Nightly, weekly and extended stays are offered. The 5-year average occupancy has been 62% residential use and 38% commercial.

Petitioners presented the following indicators of value:

Market:	\$1,800,000
Cost:	Not Provided
Income:	\$2,025,000

Petitioners' witness, David G. Berger of R.H. Jacobson & Company, presented a market approach with an indicated value of \$1,800,000 for the subject property.

Mr. Berger presented three comparable sales ranging in sale price from \$1,975,000 to \$3,050,000 and in size from 29,562 to 53,024 square feet. After adjustments were made, the sales ranged from \$18,565 to \$23,014 per room.

Petitioners' witness adjusted the comparable sales for market conditions; lot size; amenities such as pool, breakfast area or fitness area; condition; year of construction; design (walk-up vs. corridor); and location. Sales 1 and 2 were given most weight due to similar location and Sale 1 was given additional weight as the sale occurred very close to the assessment date. In his reconciliation Mr. Berger considered a range from \$18,500 to \$25,000 per room and concluded to a market value of \$20,000 per room for 90 rooms.

Petitioners' witness presented an income approach to derive a value of \$2,025,000 for the subject property.

Mr. Berger presented an income analysis of the last five years' actual income and expenses. From this data he derived an Average Daily Rate (ADR) of \$40.00 per room on a daily and weekly basis and \$700.00 per room on a monthly basis. Each class of occupancy was reduced by 40% for vacancy. An additional \$5,000 of miscellaneous income was added resulting in total revenue of \$626,000 on an annual basis. The subject's expenses, averaging 57% of gross income, were subtracted to conclude to a net operating income of \$269,180. The net income was capitalized at 10.5% based upon survey data. The capitalization rate was loaded at 2.66% for property taxes which resulted in an overall rate of 13.16%. Application of this rate to the NOI resulted in an indication of \$2,045,441, rounded down to \$2,025,000.

Petitioners' witness reconciled to a final value opinion of \$1,900,000. The figure includes a reduction for personal property.

Petitioners are requesting a 2011 and 2012 actual value of \$1,900,000 for the subject property.

Respondent presented the following indicators of value:

Market:	\$3,640,000
Cost:	Not Provided
Income:	\$4,200,000

Respondent's witness Darla Jaramillo, a Certified General Appraiser, presented a market approach with an indicated value of \$3,640,000 for the subject property.

Mrs. Jaramillo presented seven comparable sales ranging in sale price from \$1,975,000 to \$9,100,000 and in size from 22,210 to 102,716 square feet. Prior to any adjustments the sales ranged from \$19,750 to \$57,595 per room.

Respondent's witness declined to adjust the individual sales and chose to rank the transactions on a qualitative basis. Based on her analysis the subject was better than Sales 1, 3, 4, 6 and 7. The subject was inferior to Sales 2 and 5. Sales below the subject ranged from \$19,750 to \$36,466 per room while Sale 2 and 5 ranged from \$51,724 (per testimony) to \$57,995. Mrs. Jaramillo concluded to a value of \$40,000 per room. Application of that unit value to the subject's 91 rooms resulted in a value of \$3,640,000.

Mrs. Jaramillo used the income approach to derive a value of \$4,200,000 for the subject property. Respondent's witness also considered the reported 5-year income and expense information provided by Petitioners and compared that data to five different motel operations. Motels of similar size and age reported ADR's from \$37.00 to \$68.00 per room. Mrs. Jaramillo concluded to an ADR of \$45.00 per room and, based upon the above operations, applied a 70% occupancy level to produce an estimate of \$31.50 for Revenue per Available Room (RevPar). Over a full year this level of RevPar develops gross income of \$1,046,273. Expenses were estimated to be 55% of gross income leaving NOI of \$470,823. Based upon survey data Mr. Jaramillo adopted a 9.5% capitalization rate. The capitalization rate was loaded at 1.56% to recognize the long-term residential classification for part of the property. The adjusted rate of 11.06% applied to the NOI resulted in an indication of \$4,256,988 of which \$32,513 represents personal property.

Respondent's witness gave most weight to the sales comparison approach and reconciled to a final value opinion of \$4,000,000.

Petitioners contend Respondent has unfairly considered the property to have 91 rooms when one of those rooms is now a laundry. The subject property is in fair to poor condition and the only amenities are an inoperable pool and a modest lobby area. Respondent is unreasonably comparing the subject to operating motels, some of which are franchised and all of which are superior to the subject. Petitioners also object to Respondent's use of qualitative adjustments in the market approach suggesting the value obtained by this arbitrary ranking is entirely subjective.

Respondent contends the property is underutilized. The owner resides within the property and occupies two units and additional rooms are provided to vacationing family members. Other rooms are used for storage. Petitioners' witness has only reported the actual income and expenses but has not compared these figures with the experience of other properties within the market. Respondent notes the numerous adjustments applied to Petitioners' sales but questions both the choice of sales as the lowest available and the reasonableness of some adjustments.

After careful consideration the Board has determined that sufficient probative evidence and testimony was presented to prove that the tax year 2011 and 2012 valuation of the subject property was incorrect.

Both parties applied the sales comparison approach in their valuations with ten sales used in total. Curiously only one sale was reported in common, 10300 S I-70 Frontage Road. For this transaction Petitioners reported the property received \$350,000 in additional funds for remodel. These funds were considered cosmetic and the reported price was used in the analysis with no adjustment for their expenditure to improve the property. Respondent reported the actual additional expenditure was \$650,000 and the improvements were more significant than cosmetic. This \$1,000,000 spread in the property description of the only similar sale by the two parties left the Board with little confidence in this approach.

The Board finds Petitioners' income approach to be unreliable as it represents only the historic position of the current owner. Petitioners' witness provided insufficient support that the operation of the property was focused on maximizing return on investment.

Respondent's income approach; reduced during the hearing from \$4,400,000 to \$4,200,000 requires further reduction. Respondent's appraiser considers the property to have 91 units and determines an income stream on that basis. The Board questions what happened to the laundry facilities and wouldn't this item, in a building with weekly and monthly stays, be of significance to the tenants? As this question was not considered within Respondent's report the Board suggests the subject would require a laundry to compete with other properties in this market. Petitioners' witness applied a \$20.00 RevPar to the rooms currently used as storage and this amount seems reasonable to the Board. Note that Petitioners' witness applied an estimate of \$5,000 per year in "other income". Respondent's adjusted income approach is therefore:

90 rooms @ \$31.50 RevPar:	\$1,034,775
1 room @ \$20.00:	\$ 7,300
Revenues:	\$1,042,075
Expenses @ 55%:	(\$ 573,141)
NOI:	\$ 468,934
Capitalized @ 11.06%:	\$4,239,910

After a reduction of \$32,315 for personal property, the rounded value indication by the income approach is \$4,200,000.

Respondent's witness indicated in the appraisal report that most weight was placed on the sales comparison approach. Respondent's value by this approach was \$3,640,000 applied to 91 rooms at a value of \$40,000 per room. At a functional level of 90 rooms the value by Sales Comparison is therefore \$3,600,000 which would be further reduced by \$32,315 in personal property for an indication of \$3,567,685. For consistency with Respondent's reconciliation the Board, by placing modestly greater weight on the sales comparison approach, determined the following:

APPROACH	WEIGHT	ADJUSTED INDICATION
Sales Comparison	55% of \$3,567,685	\$1,962,227
Income	45% of \$4,200,000	\$1,890,000
WEIGHTED VALUE INDICATION @ 5% VARIANCE		\$3,852,000
ROUNDED:		\$3,850,000

The Board concludes that the 2011 and 2012 actual value of the subject property should be reduced to \$3,850,000.

Ruling on Motion to Dismiss

On or about August 5, 2014, Respondent filed Respondent Jefferson County Board of Commissioners' Motion to Dismiss ("Motion to Dismiss") arguing that Petitioners' appeal for 2011 should be dismissed pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S. which states, "No abatement or refund of taxes shall be made based upon overvaluation of property if an objection or protest to such valuation has been made and a notice of determination was mailed . . ."

Petitioners filed a protest for the subject property for tax year 2011 and a notice of determination denying Petitioners' protest was issued on August 16, 2011. According to Respondent, because a protest was filed for the 2011 tax year, and because Petitioners' appeal to the BAA for the 2011 tax year is based on overvaluation, Petitioners are barred from seeking abatement for that year.

The Board disagrees with Respondent's argument. To begin with, it is undisputed that Petitioners have the statutory right to challenge a property tax valuation for each tax year:

[R]egardless of any previous year's valuation or the lack of any "unusual conditions," a taxpayer has the statutory right to challenge a property tax valuation for each tax year, including a second year in a reassessment cycle, under the protest and adjustment procedure, including possibility through de novo evidentiary proceeding before the BAA.

Weingarten v. Board of Assessment Appeals, 876 P.2d 118, 220-121 (Colo. App. 1994).

Furthermore, the Board finds that Section 39-10-114(1)(a)(I)(D), C.R.S does not bar Petitioners from seeking an abatement for 2011 because Petitioners' abatement petition is not based on the issue of overvaluation (which is a factual issue). To the contrary, Petitioners argue that 2012 and 2011 assessments of the subject property should be the same. This type of argument has previously been found by the Colorado court to be based on erroneous valuation for assessment (which is a legal issue), not overvaluation. See *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119 (Colo. App. 2003):

Taxpayer's abatement petition asserts that, as a matter of law, absent unusual conditions that are not at issue here, the assessments for 1999 and 2000 must be the same. Thus, its argument requires a legal, rather

than a factual, determination. Therefore, we conclude the petition is based on erroneous valuation for assessment.

The Board also finds that pursuant to Section 39-1-104(11)(b)(I), C.R.S., and based on the factual circumstances of this case, including the Board's consideration of the condition of the property during the 2011-2012 tax years, the 2011 and 2012 valuations of the subject property should be the same.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioners, based on a 2011 and 2012 actual value for the subject property of \$3,850,000.

The Jefferson 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-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 30th day of December, 2014.

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

