

<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>CWC HOLDINGS LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>GUNNISON COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 72071</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 29, 2018, Louesa Maricle and Gregg Near presiding. Petitioner was represented by Craig Clark, Managing Member. Respondent was represented by Mathew Hoyt, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Subject property is described as follows:

**811 N Main Street  
Gunnison, Colorado 81230  
Gunnison County Parcel No. 3701-362-06-023**

The subject is a steel frame structure on a reinforced poured concrete slab. The building was constructed in 1993 on a commercially zoned site within the City of Gunnison. The building contains 5,400 square feet and is situated on a 25,134 square foot irregularly shaped site.

Evidence Presented to the Board

Petitioner presented the following indicators of value:

Market:	\$513,000
Cost:	Not applied
Income:	Not applied

Petitioner is requesting an actual value of \$513,000 for the subject property for tax year 2017. Respondent assigned a value of \$775,850 supported by a site specific appraisal report for \$800,000 for the subject property for tax year 2017.

Mr. Clark testified to his recent purchase of the subject to have been motivated by an estimate of future business growth. The business growth failed to materialize and Petitioner was unsuccessful in attracting a tenant capable to produce sufficient income to allow Mr. Clark to recoup his investment. Mr. Clark presented five comparable sales ranging in sale price from \$80,000 to \$410,100 and in size from 768 to 9,355 square feet. Mr. Clark chose not to consider sales No. 4 and No. 5 as they were from a different market and relied only upon sales No. 1 to No. 3. The sales Mr. Clark relied upon ranged in price from \$225,000 to \$410,100 and in size from 2,642 to 4,284 square feet. No adjustments were applied to the comparable sales. Petitioner considered the price per square foot paid for the comparables, ranging from \$73.12 to \$97.64, and concluded to a unit value of \$95.00 per square foot for a final value of \$513,000.

Respondent presented the following indicators of value:

Market:	\$800,000
Cost:	\$370,500
Income:	\$493,500

Respondent's witness Robert J. Blackett, a Certified Residential Appraiser for the Gunnison County Assessor, presented a market approach containing three comparable sales ranging in sale price from \$325,000 to \$800,000 and in size from 3,011 to 5,400 square feet.

Mr. Blackett adjusted for time (market conditions), location, use and size. After adjustments were made, the sales ranged in unit value from \$97.15 to \$148.15 per square foot of building area. The witness gave greatest weight to the sale of the subject property at \$148.15 per square foot and concluded to a value opinion of \$800,000 by the market approach.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$370,500. The witness provided nine vacant lot sales ranging in sale price from \$35,000 to \$650,000 and in size from 3,783 to 209,088 square feet. These sales indicated a range in unit values from \$3.11 to \$18.29 per square foot. No adjustments were applied and Mr. Blackett concluded to a site value of \$8.00 per square foot, or, \$201,072.

To estimate the Replacement Cost New (RCN) the witness referenced the Marshall Valuation Service to derive a cost for the building and site improvements of \$297,740. Physical depreciation of 39% was applied to the structure and 80% to the site improvements. No additional depreciation was recognized. A total value by the cost approach was produced by addition of the Replacement Cost New less depreciation from all causes (\$169,429) to the land value to conclude to a value opinion of \$370,501.

Mr. Blackett presented an income approach containing 14 warehouse/workshop/office leases and 14 retail leases. The combined rental rates ranged from \$2.88 to \$16.68 per square foot of

rentable area. The witness compared the mean and median rates from both sets of comparables to determine a range from \$7.09 to \$10.15 per square foot and concluded to a rate of \$8.50 per square foot. Mr. Blackett applied a vacancy rate of 0% and expenses of \$7.50 per square foot deriving a Net Operating Income of \$42,457. A capitalization rate was extracted from three local comparable sales and reference to published data producing rates from 6.17% to 9.15%. The witness adopted a rate of 7% and added the effective tax rate of 1.6% to achieve an overall rate (capitalization rate) of 8.6%. Application of the capitalization rate to the NOI resulted in a value opinion by the income approach of \$493,686 (\$493,500 rounded).

Mr. Blackett reconciled the three indications giving minimal weight to the cost approach, some weight to the income approach and significant weight to the market approach and concluding to a market value of \$800,000.

Respondent assigned an actual value of \$775,850 to the subject property for tax year 2017.

#### The Board's Findings

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board was not persuaded by Petitioner's opinion of market value. No adjustments were made to the comparable sales and Respondent's witness clearly described significant differences between Petitioner's sales and the subject property that would require adjustment. Mr. Clark testified that although he relied upon information obtained from the Assessor's office there was no attempt to verify the sales with the market participants or attempt to reconcile the different physical and locational factors differentiating these transactions from the subject.

The Board found Petitioner's purchase of the subject property to have been an "arms-length" transaction between a willing buyer and a willing seller and found this sale to have been compelling in establishing the subject's 2017 value.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

#### 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 of the respondent county, 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).

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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 3rd day of January, 2019.

**BOARD OF ASSESSMENT APPEALS**



Louesa Maricle



Gregg Near

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



Milla Lishchuk

