

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 75992

Petitioner:

KREMMLING CENTER, INC.,

v.

Respondent:

GRAND COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 30th, 2020, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Kent Whitmer, Esq. Respondent was represented by Christopher Leahy, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS AND WITNESSES

The Board admitted Petitioner's Exhibits 1-4, as well as Petitioner's Amended Exhibits 1-3. The Board also admitted Respondent's Exhibit A. The Board designated as an expert Petitioner's witnesses Mr. Kevin A. Chandler, fee appraiser holding an MAI designation and a Colorado Certified General appraisal license. The Board also designated as an expert Respondent's witness Ms. Becky Allison, holding a Colorado Certified Residential appraisal license.

DESCRIPTION OF THE SUBJECT PROPERTY

**101 Martin Way, Kremmling, Colorado
Grand County Schedule No.: R304092**

The subject property is an owner-occupied grocery building and is classified as commercial property. The building has a total of 24,751 square feet (*see* Amended Ex. 1, paginated in red, p. 23). The Board finds that this figure of square footage is correct; and that the lower figure Petitioner’s witness presents for a deduction of mechanical space is not accurate (*see id.*); and that the higher figure Petitioner’s witness also presents as “rentable area” is not credible (*see id.* at 46).

The subject property’s actual values as assigned by the County Board of Equalization (CBOE) below and as requested by each party are:

CBOE’s Assigned Value:	\$ 1,782,840
Respondent’s Requested Value:	\$ 1,782,840
Petitioner’s Requested Value:	\$ 1,240,000

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor’s valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm’n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of the Board of Assessment Appeals, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993).

APPLICABLE LAW

Standard appraisal methods, including methods for calculating physical, functional, and economic obsolescence, are defined in the reference book by Appraisal Institute, *The Appraisal of Real Estate* (14th ed. 2013).

Functional Utility is defined as: “The ability of a property or building to be useful and to perform the function for which it is intended according to current market tastes and standards; the efficiency of a building’s use in terms of architectural style, design and layout, traffic patterns, and the size and type of rooms.” *Id.* at 259.

Incurable superadequacy is defined, in part, as follows: “An item of incurable functional obsolescence caused by a superadequacy is a property component that exceeds market requirements.” *Id.* at 624.

Comparable sales outside the county may be given appropriate consideration. *See Bd. of Assessment Appeals, et al., v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo. 1990).

BOARD'S FINDINGS AND CONCLUSIONS

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

I. Cost Approach to Value — Physical, Functional, and Economic Obsolescence

Petitioner provided a short narrative cost approach analysis, including a brief narrative discussion of a small number of land sales in Kremmling to conclude to a value for the land used in the cost approach.

a. Physical Obsolescence (Physical Depreciation)

Petitioner's appraiser applied the same depreciation rate to the grocery building, the gas station canopy, and the site improvements, which have different life expectancies. For that reason, the Board concludes the physical depreciation calculation is not accurate.

b. Functional and Economic Obsolescence

Petitioner contends that the size of the subject grocery store building is larger than the population of Kremmling and the immediate trade area support, and therefore, that functional obsolescence applies to the subject property due to superadequacy of the size of the grocery building. However, after considering the evidence presented, the Board concludes that Petitioner failed to provide credible support to show what an economically feasible grocery building size for Kremmling is, or analysis to demonstrate a reasonable adjustment to value due to the building size. Other than the owner's testimony that the building is too large and the business loses money, Petitioner failed to present credible evidence to prove functional obsolescence.

Petitioner's methodology for estimating a lump sum deduction for functional and external obsolescence was to deduct the difference between the initial replacement cost new estimate, less physical depreciation, and the lower indicated value by the market approach. That dollar difference was then deducted from the replacement cost estimate less physical depreciation. The Board rejects that methodology for several reasons. First, the sales used by Petitioner's witness are too dissimilar to the subject property to support credible separate adjustments for excess building size, physical depreciation, or for external obsolescence (if indeed applicable). Second, Petitioner's methodology does not address the contributory value of the excess land associated with the subject property that Petitioner's appraiser cited in his market approach. Third,

Petitioner did not estimate the excess size of the subject building or the replacement cost new of that excess space, adjusted for physical depreciation. Fourth, Petitioner also did not estimate the cost to operate the excess space or the capitalized impact on value associated with that excess expense.

As a result, the Board concludes that Petitioner's estimate of the claimed functional and external obsolescence is not supported. Petitioner's cost approach does not produce a credible indication of value for the subject property.

The Board concludes that Petitioner failed to meet its burden of proving that the assessor's valuation is incorrect in accounting for functional, physical, or economic obsolescence.

II. Market Approach

Petitioner claims that Respondent erred by using sales of properties outside Grand County when there were sufficient sales within the county, in the towns of Kremmling and Granby, for comparison to the subject.

Petitioner has not presented sufficient evidence to prove that adequate sales are available within Grand County. The Board finds that some of the sales within Kremmling require atypically large adjustments for characteristics such as age, condition, building design and functional utility. All four of Petitioner's proposed comparable sales, which are within Kremmling and Granby, require atypically large adjustments.

Petitioner's Sale 1 is a former middle school building constructed in 1952, with two subsequent additions. It is a brick building with two stories above grade, a high-ceiling gymnasium, and a partial walk-out basement. Petitioner's witness described this property as being in fair physical condition at the time of sale. The age alone would require a large adjustment for incurable physical deterioration that would be difficult to accurately quantify. The Board finds the age, physical characteristics, and functional use of this sale are too dissimilar to the subject property to be considered a good comparable.

Petitioner's Sale 2 is inferior to the subject in age, condition, and quality of construction; all of which would require upward adjustments to the sale price per square foot when compared to the subject.

Petitioner's Sale 3 was a deed-in-lieu of foreclosure transaction, and the price reflected a "slightly motivated seller who wanted to dispose of the asset." *See* Ex. 1, p. 45. The Board finds that Petitioner's appraiser did not estimate the impact on the sale price of the seller motivation. Relying on evidence presented by Petitioner, the Board concludes that the price for Sale 3 was adversely impacted by atypical seller motivation and that the building is inferior to the subject in quality of construction and design. Those conclusions would require upward adjustments to the

sale price per square foot in comparison to the subject property. Although Petitioner's appraiser also claimed a downward adjustment to Sale 3 is necessary for this property's smaller size relative to the subject, no support for a size adjustment was presented and no evidence given regarding the size of this sale relative to a more economically feasible size for the subject property.

Petitioner's Sale 4 is described by the appraiser as a multi-tenant, former medical office building, constructed in 1954 that has subsequently been remodeled multiple times. It had average quality medical office finish at the time of sale. The Board finds that similar to Sale 1, the much older age of this property would require a large adjustment for incurable physical deterioration in addition to other physical characteristics.

Based on the evidence presented, the Board concludes that Petitioner's Sales 1 and 4 cannot be considered as comparables for the subject property. Petitioner's Sales 2 and 3 can be considered with the caveat that Sale 3 involved an undetermined degree of atypical seller motivation. However, the Board finds that the magnitude of the upward adjustments required to Petitioner's Sales 2 and 3 would be larger than the magnitude of adjustments to be made to Respondent's Sales 1 and 3.

Even though some of Respondent's sales are located in another county, the Board finds that they are more similar to the subject property in age, condition, building design, and functional utility—and therefore are more reliable—than the sales presented by Petitioner. As a result, the Board finds Respondent acted reasonably in looking for sales of similar properties in other Colorado counties in addition to Grand County. The Board concludes that the evidence presented by Petitioner is insufficient to prove that the assigned value is incorrect for relying on comparable sales beyond the county.

ORDER

The petition is denied.

APPEAL RIGHTS

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 2nd day of April, 2020.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Louesa Maricle
Louesa Maricle

Concurring Board Member:

Debra A. Baumbach
Debra A. Baumbach,
*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

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

Jacqueline Lim
Jacqueline Lim