

<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>LEPRINO FOODS COMPANY,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>MORGAN COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 51859</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 6, 2010, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by George N. Monsson, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**2400 E. Beaver Avenue, Fort Morgan, Colorado  
Morgan County Schedule No. R016343**

The subject is a 173,637 square-foot cheese processing factory that was originally built in 1993 with a freezer addition built in 1996. The site is 37.48 acres and is located in the Fort Morgan Industrial Park.

Petitioner is requesting an actual value of \$7,466,400.00 for the subject property for tax year 2009. Respondent assigned a value of \$12,046,080.00 for the subject property for tax year 2009.

Petitioner presented the following indicators of value:

Cost:	\$7,137,000.00
Market:	\$7,466,400.00
Income:	Not applied

Petitioner presented a cost approach to derive a market-adjusted cost value for the subject property of \$7,137,000.00. Petitioner's witness, Mr. Stanton E. Wagner of The Stratos Group, relied on the Assessor's land value of \$0.55 per square foot or \$867,060.00. Mr. Wagner calculated replacement cost new using Marshall Valuation Service data. Depreciation of 3.75% per year (or 60% total) was extracted from the sales relied on by Petitioner.

Petitioner presented nine comparable sales of food processing plants ranging in sale price from \$19.69 to \$57.12 per square foot. Petitioner presented five additional comparable sales of warehouse and manufacturing properties ranging in sale price from \$37.93 to \$58.22 per square foot.

Petitioner placed the greatest reliance on the nine food processing plant sales. After adjustments for location, size, and year of construction, the nine comparable food processing sales indicated an adjusted range of \$21.66 to \$54.26 per square foot. Mr. Wagner concluded to a price per square foot for the subject of \$43.00 based primarily on the sales of plants in Lemars, Iowa and Shullsburg, Wisconsin. These two sales indicated an adjusted price range for the subject of \$39.13 to \$44.96 per square foot.

Petitioner reconciled to a value for the subject of \$7,466,400.00 based on the market approach.

Respondent presented the following indicators of value:

Cost:	\$11,900,000.00
Market:	\$12,400,000.00
Income:	Not Applied

Respondent's witness, Mr. Richard W. Gilmore, relied on the Assessor's land value of \$0.55 per square foot or \$867,060.00. Respondent did not use a state-approved cost estimating service, relying on the actual cost of construction of cheese plants across the country. Mr. Gilmore agreed with Petitioner's use of 60% for depreciation. Respondent derived a market-adjusted cost value for the subject property of \$11,900,000.00.

Mr. Gilmore presented eight comparable sales ranging in sale price from \$59.34 to \$202.00 per square foot. Mr. Gilmore's sales included two cheese plant sales, three freezer sales and three food warehouse sales. Mr. Gilmore placed the greatest reliance on the two sales of cheese plants. In both sales, Mr. Gilmore extracted an allocated value for the building from the total sales price, which included inventory, accounts receivable, and other intangible assets. Mr. Gilmore concluded to a value of \$60.00 per square foot for the warehouse portion and \$150.00 for the freezer square footage, for a total value for the subject property of \$12,000,000.00.

Respondent's witness, Mr. Michael L. Krening of the Morgan County Assessor's Office, presented five additional sales of warehouse and manufacturing properties, ranging in sales prices from \$40.12 to \$58.22 per square foot. No adjustments were made to the comparable sales presented by Mr. Krening. Respondent further supported the value placed on the subject using a reported cost estimate for a proposed plant in Greeley, Colorado.

Respondent assigned an actual value of \$12,046,080.00 to the subject property for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect. Petitioner provided sales data for nine food processing properties, including properties that were used for dairy products and properties that included freezer and/or refrigerator space. The value indicated by Petitioner's market approach was well supported by the cost approach provided, which was based on data from a state-approved cost estimating service.

The Board was convinced through the testimony of Mr. Gilmore and Mr. Krening, along with the Real Property Appraisal Summary Report (Respondent's Exhibit A) in evidence, that the value indicated by Respondent was incorrectly based on the subject being part of a "going-concern." Going-concern value as defined by *The Dictionary of Real Estate Appraisal*:

1. The market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the market value of the going-concern.
2. The value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value when it exists and is recognizable. *The Dictionary of Real Estate Appraisal*, Fifth Edition, pg. 88, 2010.

In the valuation of property for ad valorem tax purposes, "[a]ll real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor...The actual value of such property...shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal..." § 39-1-103(5)(a), C.R.S. Actual value has been defined as the fair market value of the property during the base year period. It has been described as "what a willing buyer would pay a willing seller under normal economic conditions." *Bd. of Assessment Appeals v. Colo. Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988). The Board was convinced that Petitioner correctly analyzed the actual value of the subject.

Respondent's evidence did not support the current value placed on the subject. The Board found Respondent's sales to be less reliable as an indication of value. Respondent's witness, Mr. Gilmore, incorrectly relied on the December 2009 sale of a cheese plant, a date of sale that is beyond the base period. Mr. Gilmore also included four sales that involved the leased fee interest in freezer and cold storage properties, which are not reliable as an indicator of the fee simple value for the subject. Several sales relied on by Mr. Gilmore required the appraiser to determine an allocated value to the building based on sales that included the exchange of inventory, accounts receivable, and other intangible assets. Mr. Gilmore testified that the allocation was based on his analysis, rather than information provided by either the buyer or seller involved in the sales transaction. Mr. Gilmore's cost analysis was based on financing information that again required the use of allocation by the appraiser to conclude to costs for the building separate from the costs associated with fixtures and equipment.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$7,466,400.00.

**ORDER:**

Respondent is ordered to reduce the 2009 actual value of the subject property to \$7,466,400.00.

The Morgan 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 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-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 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 14 day of January 2011.

**BOARD OF ASSESSMENT APPEALS**

*Diane M DeVries*  
Diane M. DeVries

*Sondra W. Mercier*  
Sondra W. Mercier

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

*Amy Bruins*  
Amy Bruins

