

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 53195

Petitioner:

AMP & ASSOCIATES, INC.,

v.

Respondent:

PUEBLO COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 20, 2010, Louesa Maricle and MaryKay Kelley presiding. Petitioner was represented by Larry Higinbotham, Esq. Respondent was represented by Dan Kogovsek, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**400 South Union Avenue, Pueblo, Colorado
(Pueblo County Schedule No. 05-364-28-011)**

The subject property is a vacant, historically-designated, brick warehouse built in 1915 on a 0.54 acre lot in the Union Avenue Historic District. The building fronts and is accessed from B Street, backing to railroad tracks and a concrete levy along the Arkansas River. Historic designation prohibits demolition and places constraints on renovation. The structure is uninhabitable, requiring repair or replacement of the exterior, interior, and all systems.

Respondent assigned an actual value of \$753,425.00 for tax year 2009. Petitioner is requesting a value of \$500,000.00.

Based on the market approach, Petitioner presented an indicated value of \$500,000.00 for the subject property. The witness presented two analyses: one with vacant building sales ranging in sales price from \$248,000.00 to \$2,200,000.00 (\$10.99 to \$18.88 price per square foot) and concluding to \$14.00 per square foot or \$488,040.00, and one with occupied building sales ranging in sales price from \$230,000.00 to \$750,000.00 (\$38.33 to \$51.37 per square foot),

concluding to \$15.00 per square foot or \$522,900.00. A detached utility shed, determined to be of low quality construction and in extremely poor condition, was not included in either analysis.

Petitioner's witness, arguing non-uniformity in the equalization process, compared actual values of improvements and argued that the subject, at \$18.21 per square foot, was assigned an improvement value as high or higher than renovated buildings or buildings in superior locations.

Based on the cost approach, Respondent presented an indicated value of \$823,000.00. Land value was derived by the direct comparison method with an indicated value of \$5.00 per square foot or \$87,090.00. Improvement value was estimated at \$735,757.00 per Marshall and Swift Valuation Service.

Based on the market approach, Respondent presented an indicated value of \$850,000.00 for the subject property. The witness presented three comparable sales for the three-story building ranging in sales price from \$400,000.00 to \$2,200,000.00 and in size from 14,000 to 173,258 square feet. Adjusted sales prices, minus actual land values, ranged from \$414,709.00 to \$1,936,765.00 or \$11.18 to \$47.73 per square foot. Value was correlated at \$22.00 per square foot. The attached loading dock and warehouse and the detached utility shed were valued independently per Marshall & Swift Valuation Service and added, along with a market-indicated land value, to the value of the three-story structure.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect.

The Board does not consider the cost approach a reliable indication of value due to the age of the subject improvements and the difficulty in estimating obsolescence.

The parties debated the appropriate approach to value, highest and best use as a future development site or current use. Section 39-1-103, C.R.S. requires "actual use" valuation in ad valorem taxation. Previously, a court found that reasonable future use may be considered in determining value but not speculative use. *Colo. Arlberg Club v Board of Assessment Appeals*, 719 P.2d 371 (Colo. App. 1986). The Board is convinced that Respondent's highest and best use determination as a future development site is speculative.

The Board disagrees with Respondent's sales comparison approach methodology, which includes valuing only the improvements and subsequently adding the subject's market-indicated land value on the basis that land must be valued separately. The Board believes the land and improvements should be analyzed, adjusted and valued as an aggregate.

The Board gives little weight to Petitioner's "occupied" sales comparison approach. The comparable sales are income-producing properties. Fully-leased properties realize a higher value than a property not fully-leased, and a vacant property is worth even less. The cost to cure adjustment is an estimate and does not include an inconvenience factor or unknown historic regulations that could impact the price of materials. Comparison with going concerns is a very subjective analysis.

In review of the parties' sales comparison approaches addressing the subject as a vacant warehouse, the Board dismisses the common comparable at 303 South Santa Fe Avenue (Petitioner's Sale 1 and Respondent's Sale 3) because of its considerably larger building size (173,258 square feet), which would likely market to a different buyer. Petitioner's Sale 2 is not considered comparable because its use is retail. Respondent's Sale 1 is not considered because it was purchased by the adjoining parcel's newspaper-owner who later purchased another adjoining property, assemblage likely a factor and incentives possible.

The remaining two sales (Petitioner's Sale 3 and Respondent's Sale 2) are considered most similar to the subject in age, size, and use (the Board considers Petitioner's Sale 3, used for cold storage and packaging, to be similar). The Board applied the following percentage adjustments: 720 West 8th Street (Petitioner's Sale 3) at 5% for location and 5% for age, concluding to \$605,000.00, and 101 South Main Street (Respondent's Sale 2) at 25% for location and 5% for size, concluding to \$794,999.00. Based on testimony, the Board concludes that the subject property's construction quality was a grade B and that no adjustment was warranted for comparison to a grade C. Reconciliation at mid-point of the range (\$700,000.00) is warranted, absent persuasive testimony or evidence regarding the roughly \$200,000.00 range of adjusted values.

The Board finds that an adjustment for physical condition is warranted and has applied a figure of \$200,000.00 to address roof and elevator replacement, utilities, and miscellaneous repair items.

The Board is not convinced that Petitioner's land adjustments, based on land-to-building ratios, are appropriate or warranted. The primary use of the subject site is loading, unloading, and possibly truck parking; unlike retail, customer parking is not a factor. Excess ground might carry value if building expansion was a factor, but this was not argued for the two sales considered comparable by the Board. A rent analysis, which might address the value of excess ground, is not available. The Board is not convinced that adjustments for land size are relevant.

The Board concluded that the 2009 actual value of the subject property should be reduced to \$500,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$500,000.00.

The Pueblo 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.

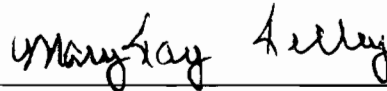
Section 39-8-108(2), C.R.S.

DATED and MAILED this 5 day of November 2010.

BOARD OF ASSESSMENT APPEALS

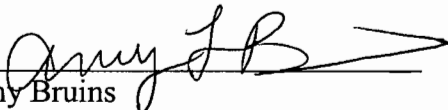


Louesa Maricle



MaryKay Kelley

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


Amy Bruins