

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 55052

Petitioner:

TRM-MONTBELLO CORP,

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 2, 2010, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**11809-11839 E. 51st Avenue, Denver, Colorado
Denver County Schedule No. 01144-04-022-000**

The subject is a 57,240 square foot multi-tenant warehouse property completed in 1982 on a 2.65 acre site.

Petitioner is requesting an actual value of \$1,650,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$2,846,800.00 for the subject property for tax year 2009.

Petitioner presented the following indicators of value:

Cost:	Not Applied
Market:	\$1,888,920.00
Income:	\$1,618,413.00

Petitioner's witness, Mr. Todd J. Stevens of Stevens & Associates, Inc., presented four comparable sales ranging in sale price from \$887,500.00 to \$2,340,000.00 and in size from 30,860 to 60,000 square feet, indicating a range in price of \$27.69 to \$39.00 per square foot. After adjustments were made, the sales ranged from \$25.98 to \$39.00 per square foot. Petitioner concluded to a value of \$33.00 per square foot for the subject, which was equal to \$1,888,920.00.

Petitioner presented an income approach to derive a value of \$1,618,413.00 for the subject property. Petitioner presented six comparable leases, with lease rates ranging from \$2.75 to \$3.65 per square foot net of expenses, including a lease that was signed at the subject during the base period. Petitioner concluded to a rate of \$3.65 per square foot. Petitioner added a common area reimbursement (CAM) of \$1.40 per square foot. Petitioner applied a vacancy rate of 15% to reflect the above market vacancy within the subject that occurred for much of the base period. Income-based deductions included a management fee of 3%, CAM without property taxes of \$41,765.00, and non-reimbursed operating, maintenance, and reserves of 15%. Petitioner concluded to a capitalization rate of 8.0%, then added an additional 1.94% as property tax load.

Mr. Stevens concluded to an actual value of \$1,650,000.00 for the subject property for tax year 2009.

Respondent presented the following indicators of value:

Cost:	\$2,996,700.00
Market:	\$2,804,800.00
Income:	\$2,935,100.00

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$2,996,700.00. Respondent's witness, Mr. Carlos Gauna with the Assessment Division of the Department of Finance of the City and County of Denver, testified that he placed limited weight on the cost approach.

Respondent's witness, Mr. Gauna, presented four comparable sales ranging in sale price from \$1,950,000.00 to \$4,280,000.00 and in size from 38,194 to 86,820 square feet, indicating a price range of \$39.00 to \$51.47 per square foot. No adjustments were made to the comparable sales. Mr. Gauna testified that he concluded to a value of \$49.00 per square foot based on an analysis of all of the sales in the Denver area and appraisal judgment.

Respondent used the income approach to derive a value of \$2,935,100.00 for the subject property. Mr. Gauna testified that he had placed the greatest reliance on information contained in the *2009 Warehouse/Industrial Review*, prepared by members of the Assessment Division for use in mass appraisal. Mr. Gauna presented rental information for four properties that indicated a range in rental rates of \$3.28 to \$3.92 per square foot net of expenses, also giving consideration to the actual lease rate of \$3.65 per square foot, net, negotiated within the subject during the base period. Mr. Gauna concluded to a rental rate of \$4.15 per square foot net of expenses for the subject based on mass appraisal data. Respondent applied a vacancy and collection loss of 7%, operating expense deduction of 7%, and an overall capitalization rate of 7%, based on mass appraisal data contained in the *2009 Warehouse/Industrial Review*.

Mr. Gauna concluded to an actual value of \$2,935,100.00 for the subject property for tax year 2009.

Respondent assigned an actual value of \$2,846,800.00 to the subject property for tax year 2009.

Sufficient probative evidence and testimony was presented to prove that the 2009 value of the subject property was incorrect and should be reduced. The Board was convinced, based on Mr. Gauna's testimony, that Respondent relied on data from mass appraisal, which was not supported by property specific information.

Like both parties involved in the petition, the Board places the greatest reliance on the income approach, with support from market sales. The Board finds Petitioner's rental rate and overall rate prior to tax load to be supported by evidence from both parties. However, the Board finds Petitioner's deductions for vacancy loss, management expenses, and non-reimbursed expenses to be excessive based on market data provided. The value is recalculated by the Board to include a rental rate of \$3.65 per square foot net of expenses, a vacancy factor of 8.0% based on the market information for the East sector contained in the *Frederick Ross Company Denver Industrial Market Report* for mid-year 2008, a deduction of 7% for non-reimbursed expenses and reserves, and an overall rate of 8%, which is supported by information from both parties.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$2,234,464.00, which represents a value of \$39.04 per square foot for the subject. This value is supported by the common comparable sale presented by both parties of 10700-10770 E. 51st Avenue, which sold for \$39.00 per square foot in October 2007.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$2,234,464.00.

The Denver 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

Karen E Hart

Karen E. Hart

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

