

<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>JOHN J. SILCHIA TRUST,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 56773</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 19, 2011, Sondra W. Mercier and Lyle D. Hansen presiding. Mr. John Silchia appeared pro se on behalf of Petitioner's trust. Respondent was represented by Michelle Bush, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2009.

Subject property is described as follows:

**575 St. Paul Street, Denver, Colorado  
Denver County Schedule No. 05016-28-019-000**

The subject property consists of a brick masonry single-tenant freestanding restaurant built in 1932 and contains a total of 3,041 square feet on the main level and a 1,336 square foot basement. The net rentable area is 3,041 square feet. The building is occupied by a bar/restaurant tenant. The building has a bar area, restaurant seating, kitchen, game room, and restrooms. The building is situated on a 6,250 square foot lot.

Petitioner requested an actual value of \$298,056.00 for the subject property for tax year 2009 on the Petition and changed that value to \$299,808.00 at the hearing. Respondent assigned a value of \$446,725.00 for the subject property for tax year 2009.

Petitioner presented the following indicators of value:

Market:	\$0.00
Cost:	\$0.00

Income: \$299,808.00

Petitioner's representative, Mr. John Silchia, presented no comparable sales.

Mr. Silchia presented no cost approach.

Mr. Silchia presented an income approach to derive a value of \$299,808.00 for the subject property. Mr. Silchia utilized his actual 2009 income of \$38,975.00 from the subject's triple net lease. He applied a capitalization rate of 13% to derive a value indication of \$299,808.00.

Mr. Silchia testified that the Denver County Assessor's comparable sales had no similarity to the subject. He testified that the income from the subject's lease has not increased except for CPI increases, insurance and real estate taxes. Mr. Silchia testified that the subject property is not located on East Sixth Avenue and therefore has neither passing automobile traffic nor visibility for his restaurant property. He testified that the Denver County Assessor has given no consideration as to the value of the subject if the property became vacant.

Petitioner is requesting a 2009 actual value of \$299,808.00 for the subject property.

Respondent presented the following indicators of value:

Market:	\$577,800.00
Cost:	\$546,500.00
Income:	\$566,000.00

Respondent's appraiser, Mr. Paul Kalish, presented four comparable sales ranging in sale price from \$600,000.00 to \$1,080,000.00 and in size from 2,632 to 5,236 square feet. After adjustments were made, the sales ranged from \$141.81 to \$246.96 per square foot of subject gross building area. Mr. Kalish accomplished adjustments for property's visibility, gross building area, parking ratio, year of construction, property's utility and amenities. He gave equal weight to each of his four sales.

Mr. Kalish used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$546,500.00. He concluded a value indication range by the cost approach of \$495,800.00 to \$546,500.00.

Mr. Kalish used the income approach to derive a value of \$566,000.00 for the subject property. He concluded a triple-net rental rate of \$17.00 per square foot, a vacancy rate of 5%, an owner-expense rate of 5%, and a capitalization rate of 8.0% to 8.5%. Mr. Kalish concluded a value by the income approach of \$566,000.00 or \$186.12 per square foot.

Mr. Kalish gave equal weight to his market approach and his income approach to derive a final value estimate for the subject of \$570,000.00.

Respondent assigned an actual value of \$446,725.00 to the subject property for tax year 2009.

Respondent presented sufficient probative evidence and testimony to show that the tax year 2009 valuation of the subject property was correct.

Petitioner presented no comparable sales to support his value estimate. Mr. Silchia, in developing his income approach to value, utilized the actual rents from the subject rather than deriving an economic rental rate from comparable restaurant rentals. Mr. Kalish testified that the Denver Assessor, by state statute, is required to derive the value of the fee simple interest utilizing economic rents obtained from comparable rentals rather than deriving the leased fee interest utilizing the subject's actual rents as was accomplished by Petitioner.

The Board agreed with Respondent's valuation analyses applied in both the market approach and the income approach. Mr. Kalish provided market data to support his estimates of rental rates, vacancy, expenses and capitalization rates in the income approach. The Board agreed with Mr. Kalish's adjustments analysis in the market approach.

**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-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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 18th day of January, 2012.

**BOARD OF ASSESSMENT APPEALS**

*Sondra W Mercier*

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Sondra W. Mercier

*Lyle D. Hansen*

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Lyle D. Hansen

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

*Milla Crichton*

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Milla Crichton

