

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>NEVILLE HOMI SARKARI,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 61395</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 28, 2013. Gregg Near and Debra A. Baumbach presiding. Petitioner was represented by C. Michael Sunoo, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

Lot 1 Block 1 Days Inn Business Park Ex Roads
Arapahoe County, Colorado
Parcel No.: 2075-22-3-23-008

The subject property is a five story Motel 6 franchise establishment constructed in 1981. The construction is stucco and brick consisting of approximately 55,300 square feet. In addition, there is a free-standing restaurant building consisting of over 3,000 square feet with a construction date of 1980. Petitioner is requesting a value of \$1,714,645 for tax year 2012 and Respondent assigned an actual value of \$2,370,000 for tax year 2012.

Petitioner, Mr. Sarkari, testified that the subject motel was initially purchased by his father-in-law in 2008 as a joint family venture. Petitioner was able to secure financing and purchase the subject property from his father-in-law in 2009. Mr. Sarkari testified that he was experienced in operating and managing motels as he had owned several motels prior to the purchase of the subject property.

Mr. Sarkari contends that Respondent has overvalued the subject property by not giving adequate consideration to some of the actual expenses incurred from operation of the subject

property. According to Petitioner, the motel is considered a low end budget facility with low profit margins and high expenses. Petitioner testified that the motel has been struggling to maintain steady income streams and meet increasing operating expenses. Mr. Sarkari rents out 50% of the rooms to long term guests and 50% for daily guests in an attempt to keep steady income levels. The expenses run higher for the long term guests than for daily guests as a result of damage and replacement costs associated with long term stays. Although allowing long term guests is at odds with corporate policy, such arrangement helps with maintaining steady income and meeting financial obligations pursuant to the motel's franchise agreement.

Mr. Sarkari argued that he did not agree with Respondent's income approach as it did not give adequate consideration to all the additional expenses in the overall operation. According to Mr. Sarkari, the franchise fee runs approximately 7% of the gross revenues. In 2009, wages accounted for approximately 39% to 40% of revenues; and in the first half of 2010 -- approximately 30%. Also, per Mr. Sarkari, Respondent considered income that was not actually generated but was included in Petitioner's accounting system.

Petitioner is requesting a 2012 actual value of \$1,714,645 for the subject property. Respondent requested the Board to uphold the County Board of Equalization's assigned value of \$2,370,000 for the subject property for tax year 2012 based on mass appraisal methodology.

Respondent made a motion to dismiss the appeal based on Petitioner's failure to meet its burden of proof that the subject property was incorrectly valued for tax year 2012.

Until Mr. Sarkari's testimony at the hearing, Respondent was unaware that 50% of the motel's income was received from long term guests. Respondent believed that this new information changed the scope of the valuation. Therefore, Respondent did not present any witnesses or evidence believing that the testimony and/or evidence would be misleading and incorrect in light of the new information received from Mr. Sarkari.

Respondent assigned an actual value of \$2,370,000 for the subject property for tax year 2012.

The Board grants Respondent's motion to dismiss based on Petitioner's failure to meet its burden of proof. A taxpayer's burden of proof at a BAA proceeding is well-established: a protesting taxpayer must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005).

The Board gave consideration to Petitioner's testimony regarding the actual operating and expense information. However, the Board was not presented with any documentation supporting Petitioner's requested value or refuting the information that was relied on by Respondent. Respondent relied on income and expense information provided by Petitioner from 2009 and Petitioner did not provide any documentation from the first part of 2010 which is within the applicable time frame for data collection. There was insufficient testimony and evidence presented that Respondent erred in its valuation.

ORDER:

The appeal is dismissed.

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).

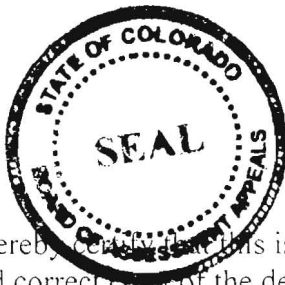
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of 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 17th day of June, 2013




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


Milla Lishchuk

BOARD OF ASSESSMENT APPEALS


Gregg Near


Debra A. Baumbach