

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WELLINGTON RESOURCES, LLC</p> <p>v.</p> <p>Respondent:</p> <p>PUEBLO COUNTY BOARD OF COMMISSIONERS</p>	<p>Docket No.: 62145</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 6, 2013, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Hal M. Sears, Manager of Wellington Resources, LLC. Respondent was represented by Cynthia Mitchell, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2012.

Docket Nos. 61245 and 61246 were consolidated for the purposes of the hearing only.

Subject property is described as follows:

**1020-1024 N. Market Plaza, Pueblo West CO
Pueblo County Schedule No. 05-071-05-005**

The property consists of a 5,078 square foot owner-occupied mini-lube and car wash facility located in Pueblo West, CO. The two buildings were constructed in 2007 and contain three lube bays and five car wash bays. Three of the five car wash bays are self-service, and two are automatic. The buildings are masonry construction and reported to be in good condition. The mini-lube garage contains a basement, and lot size is 1.10 acres. The facility is located in an anchored retail center and the mini-lube building houses a Grease Monkey franchise. Wellington Resources purchased the lot in 2005, constructed the automotive facility in 2007, and then repurchased the property for \$523,000 in 2011 subsequent to a foreclosure by Vectra Bank. Note that this repurchase took place after the statutory base period for tax year 2012.

Petitioner is requesting a value of \$523,000 for tax year 2012. Respondent assigned a value of \$951,264 for tax year 2012.

Petitioner presented the following indications of value:

Cost:	Not Developed
Market:	\$523,000
Income:	Not Developed

Based on a review of sales of similar facilities, Petitioner concluded to an indicated value of \$523,000 for the subject property.

Petitioner's witness, Mr. Hal M. Sears presented two sales of similar automotive facilities ranging in sale prices from \$350,000 to \$825,000. Petitioner's witness provided no adjustments to these sales and reconciled at an indicated value of \$523,000 for the subject.

Mr. Sears argued that business for this type of facility was struggling due to economic conditions and that these adverse conditions should be reflected in the value of the real estate. Mr. Sears further testified that Respondent overvalued the subject, given that only a cost approach was developed to support value.

Respondent presented the following indications of value:

Cost:	\$951,264
Market:	Not Developed
Income:	Not Developed

Respondent's witness, Ms. Sara J. VanGalder of the Pueblo County Assessor's Office, presented a cost approach based on data derived from Marshall Valuation Service reflecting a depreciated replacement cost for the subject of \$567,936. Ms. VanGalder estimated physical depreciation at 4% to 6% of cost new based on data from the Marshall depreciation tables. Respondent's witness testified that she could not support, and did not deduct any functional or economic obsolescence. The depreciated cost was then added to land value of \$383,328 (\$8.00 per square foot) to reflect a value via the cost approach of \$951,264.

Ms. VanGalder testified that given the lack of comparable sales in Pueblo County, a meaningful market approach could not be developed and that a cost approach was appropriate for a special purpose building of this type. Ms. VanGalder further testified that the sales provided by Petitioner were not arm's length transactions.

The primary areas of disagreement between Petitioner and Respondent consisted of the value of the land, as well as which approach (cost or market) best supported a reasonable conclusion of market value given the special purpose use and occupancy of the subject. In addition, the parties disagreed as to how economic conditions affected the property as of the valuation date.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect.

Colorado case law requires that “[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . .” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Although the analysis contained in Respondent’s appraisal was marginal and Respondent witness’s testimony was evasive, Petitioner did not provide sufficient probative evidence to convince the Board that Respondent’s value was incorrect. After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that the variables used in Respondent’s cost approach were not sufficiently impeached by Petitioner to allow the Board to consider a reduction in value. In addition, the Board could not determine from the exhibits and testimony if the sale comparables presented by Petitioner were arm’s length transactions, and what items (e.g. equipment, personal property, business value) may have been included in the transactions.

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-nine 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 18th day of November, 2013.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

James R. Meurer

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

Milla Lishchuk

Milla Lishchuk

