BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **15 CENTS LLC,** v. Respondent: **MONTROSE COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 66434**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 31, 2016, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Petitioner moved to strike Respondent's rebuttal report as it was not delivered timely and because the document is a rebuttal of Petitioner's rebuttal and not of Petitioner's Rule 11 submission. The Board determined Respondent's rebuttal report to be inadmissible.

Respondent objected to admission of Petitioner's Exhibit 3, an appraisal report completed by the Heath Group with an effective date of July 16, 2012. Respondent contended the report was prepared for estate purposes and the appraisers were not available to testify. Petitioner agreed to the exclusion of the exhibit. The parties otherwise stipulated to the admission of Respondent's Exhibit A, Petitioner's Exhibits 1 and 2 and to the qualifications of the expert witnesses.

Subject property is described as follows:

3332 N Townsend Avenue
Montrose, Colorado
Montrose County Schedule No. 3767-181-06-004

The subject is an industrial distribution warehouse constructed in 2002. The building contains a total of 24,000 square feet and is situated on a 200,681 square foot site in north Montrose, just off

Highway 50, the primary north/south route in the region. The building is comprised with 2,025 square feet of office, 5,427 square feet of refrigerated storage and a central drive-through truck loading station containing 4,560 square feet.

Petitioner presented the following indicators of value:

Market:	$1,080,000
Cost:	$1,267,797
Income:	$918,000

Petitioner is requesting an actual value of $1,000,000 for the subject property for tax year 2015. Respondent assigned a value of $1,921,630 for the subject property for tax year 2015 but is recommending a reduction to $1,800,000.

Petitioner's witness, Mr. Todd Stevens of Stevens & Associates, testified regarding the October 2012 purchase of the subject property by 15 Cents, LLC from Colorado Beverage Distributing, Inc. The purchase price, including business franchise value, equipment, vehicles, inventory and real estate was $1,600,000. Mr. Stevens noted the Heath Group appraisal had concluded to a real property value of $1,320,000.

Mr. Stevens presented a market approach consisting of five comparable sales ranging in sale price from $660,000 to $965,750 and in size from 14,052 to 25,200 square feet.

Stating that there were insufficient base period sales available. Mr. Stevens presented three sales from Mesa County that occurred in March, April and May of 2013, one sale from Montrose County in January 2012 and one sale from Delta County that closed in October 2011. The witness concentrated on the sales in Mesa and Montrose Counties and applied adjustments for location, age, economic characteristics, excess land and improvement size. After adjustments, the sales ranged from $26.71 to $45.94 per square foot. Mr. Stevens concluded to a unit value of $45.00 per square foot and a value of $1,080,000 by the market approach.

Petitioner's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $1,267,797.

Mr. Stevens determined a land value for the subject of $1.50 per square foot, (very similar to Respondent's opinion of $1.55 per square foot), concluding to a total land value of $301,022. The building was separated into three sections representative of use as storage warehouse, air-conditioned warehouse, or cold-storage warehouse. The witness then determined a replacement cost new for each section and applied a 10% adjustment for physical depreciation to each Mr. Stevens then determined the cost of the site improvements, depreciated that amount by 80% to determine a cost new less physical depreciation of $1,381,108. An adjustment of 30% was then applied to the improvements for economic obsolescence. After the addition of the land value, the resulting total cost value of $1,267,797 was concluded.

Petitioner's witness presented an income approach to derive a value of $918,000 for the subject property.

Mr. Stevens reported six comparable leases. The leases were for spaces from 3,547 square feet to 18,362 square feet and the rental rates ranged from $3.27 to $6.00 per square foot on a variety of terms. The witness gave greatest weight to a lease of a 5,000 square foot building approximately 1.5 miles away from the subject and concluded to a triple net (NNN) rate of $4.25 per square foot. The potential gross income was reduced by 10% for vacancy and by an additional 15% for operating, maintenance and reserves. The resulting net operating income was capitalized at 8.5% based upon a regional real estate investment survey.

Mr. Stevens reconciled to a final value of $1,000,000. Stating that due to the limited leases available for comparison and due to the influence of business value, the income approach was not heavily relied upon. The witness considered the sales data to be reliable and the cost approach to be reliable as it is not influenced by the business value.

Respondent presented the following indicators of value:

Market:	$1,800,000
Cost:	$1,775,000
Income:	$1,765,000

Respondent's witness, Mr. Brook Moyer, a Certified Residential Appraiser, presented four comparable sales ranging in sale price from $825,000 to $5,800,000 and in size from 13,225 to 93,356 square feet. After adjustments were made, the sales ranged from $1,776,457 to $1,968,644.

Mr. Moyer presented two sales from Grand Junction and two sales from Montrose. The witness stated the Grand Junction market was not superior to Montrose. One Grand Junction sale was superior in location and that was due to better visibility from Interstate 70.

Mr. Moyer adjusted the sales for time; size; land/building ratio; visibility; year built and quality. After adjustments the sales ranged from $74.02 to $82.03 per square foot. The witness concluded to a unit value of $75.00 per square foot and a total value of $1,800,000 by the market approach.

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $1,775,000.

Mr. Moyer determined a land value for the subject of $1.55 per square foot, (very similar to Petitioner's opinion of $1.50 per square foot) concluding to $310,000. The building was separated into two sections representative of use as good quality Class S warehouse and as average quality cold storage. After estimation of the cost for site improvements, the witness concluded to a replacement cost new of $1,567,279. After a 15% adjustment for physical depreciation, Mr. Moyer concluded to a "Replacement Cost Less Depreciation" figure of $1,332,187. After adding a 10% upward adjustment to the depreciated cost figure for entrepreneurial incentive and adding the land value, the witness concluded to a value by the cost approach of $1,775,000.

Respondent's witness used the income approach to derive a value of $1,765,000 for the subject property.

Mr. Moyer reported six comparable rentals. Five of the six rentals were asking rates. One actual lease for a cold storage building with 18,900 square feet was reported in Montrose at a rate of $6.35 per square foot on a modified gross basis. The asking rents were for spaces ranging from 15,000 to 28,291 square feet with rates ranging from $5.81 to $12.00 per square foot on NNN terms. The witness concluded to a NNN rate of $7.30 per square foot. Potential gross income was reduced by 10% for vacancy and by an additional 6% for building insurance and management expense. The resulting net operating income was capitalized at 8.4% based upon a regional real estate investment survey.

Mr. Moyer gave most weight to the cost approach and concluded to a final value of $1,800,000. Sale 1 was identified as the transaction most similar to the subject because it required no adjustment. The witness considered the other approaches to be supportive of the final value. Because the subject building type is typically owner occupied, lease data was limited and required too much reliance upon listings. The cost approach supports the indication of the market because there are only three buildings like the subject in Montrose and all are occupied.

Petitioner contends Respondent has placed too much reliance upon the purchase of the subject in 2012 for $1,600,000 as a significant portion of the sale price included business value. Petitioner disagrees with Respondent's market approach because Sale 1 has too much office finish; Sale 2 is actually a sale/leaseback; Sale 3 was a multiple building sale without market exposure and Sale 4 could not be confirmed. Petitioner disputes the use of sales from the Grand Junction market without adjustment for the lower values found in Montrose. Petitioner dismisses Respondent's income approach due to over-reliance upon asking rates and use of a low expense percentage. Respondent's income approach also concludes to a rental rate exceeding the only actual cold storage lease that was reported. Petitioner further objects to Respondent's cost approach because there was no adjustment for economic obsolescence.

Respondent contends Petitioner's market approach consists entirely of transactions outside the base period, one of which was bank owned. Respondent considers Petitioner's adjustments in the market approach to be excessive. Respondent also disputes Petitioner's application of a 30% reduction for economic obsolescence within the cost approach noting the property is in good condition; has a good location on the main highway; there is significant new construction in the area and there are no vacant cold storage buildings available. Respondent further disagrees with Petitioner's income approach due to an excessive adjustment for operating and maintenance expenses.

Petitioner's contention that Respondent overvalued the property by neglecting the business value included in the 2012 purchase at $1.6 million leads the Board to consider the cost approach conclusions presented by both parties. There was little disagreement in the land value estimate and both parties produced very similar replacement costs less physical depreciation. Petitioner's estimate is $1,381,108 whereas Respondent concluded to $1,332,187, with a difference of $48,921. The parties took different positions in regard to external (economic) obsolescence. Petitioner applied a deduction of 30% to cost new less physical depreciation based upon the subject's remote location and conversations with local brokers. Respondent applied an upward adjustment to cost new less physical depreciation of 10% to represent entrepreneurial incentive. This upward adjustment of 10% was derived by the Assessor's calculation of depreciated cost compared to the recorded sale price. The calculation involved 11 buildings varying in design/use from warehouse to medical office that transacted between 2012 and 2014. The median gain/loss indication from this analysis was 5%.

Petitioner's 30% adjustment to replacement cost new less depreciation is supported only by the opinion of the witness. Respondent's upward adjustment of 10% is not supported by a reliable research methodology and it is also not supported by the witness's own testimony that several buildings were under construction but none were the same design/use as the subject (cold storage). Entrepreneurial incentive requires a sufficiently vibrant market as to entice a builder to take the risk in new construction. The Board also considers this incentive to be less appropriate within a market dominated by owner-users.

Proper order of adjustment also requires that forms of physical, functional and external obsolescence are to be accounted for as deductions from cost new, not, as in the case with the calculations provided by the parties, by application of external obsolescence or incentive adjustments to the physically depreciated cost estimate. The Board does not find either party to be persuasive.

The Board's reconstructed cost estimates are therefore:

Item:	Petitioner	Respondent
Total Improvement Cost New:	Not provided	$1,567,279
Replacement cost less physical depreciation:	$1,381,108	$1,332,187
External Obsolescence	-0-	-0-
Entrepreneurial Incentive	-0-	-0-
Land Value	$301,022	$310,000
Adjusted Cost Estimate:	$1,682,130	$1,642,187

Petitioner's witness did not provide a Total Improvement Cost New. The calculations provided included cost new estimates for the buildings but only a depreciated cost for yard improvements. As there was insufficient evidence provided by Petitioner that the yard improvements were 80% depreciated, the Board was more inclined to weight Respondent's adjusted figures and has adopted an estimate of $1,650,000 (rounded).

Both parties developed a value opinion by the market approach. The Board first considered time adjustments. Petitioner's sales extended as far back as October 2011 with the most recent in May 2013. No adjustment for time was applied. Respondent's sales extended from November 2012 to May 2014. An adjustment of 0.6% per month was applied to all sales except the May 2014 transaction.

As the adjustment applied for the passage of time is significant in this case (ranging up to 12% of the total sale price) the Board has focused on this area. Assuming, *for the purposes of this argument only*, all other adjustments in Respondent's report to be correct, reason suggests that subtracting the adjustments applied by the appraiser for everything but time would then reveal a gap in price. That gap in price should show the direction of the market. The Board applied this process as follows:

SALE	1	2	3	4
SALE PRICE	$1,100,000	$5,800,000	$4,300,000	$825,000
SALE DATE	05/14	01/14	11/12	03/14
$/SQUARE FOOT	$74.73	$62.13	$91.55	$62.38
ADJUSTMENTS	-0-	+15%	-20%	+20%
ADJUSTED SALE PRICE	$1,100,000	$6,670,000	$3,440,000	$990,000
INDICATION:	$74.73	$71.45	$73.24	$74.86

If the market was actually improving and Respondent's other adjustments are correct then there should be a significant gap between the oldest transaction and the newest. The indicated gap between Sale 3, the oldest, and Sale 1, the newest, is 2%. Respondent's time adjustment over the same period is 12%. Respondent's own sales suggest either the applied time adjustment is inappropriate or some other adjustment (or combination of adjustments) is incorrect. The Board did not find Respondent's analysis of paired sales persuasive as it mixed office/warehouse, light industrial, distribution and retail property types. This analysis also reported four industrial type structures ranging in size from 6,700 to 14,052 square feet that sold within the Montrose market. Only one of these, Sale 4, was related in Respondent's report. This information further leads the Board to question why Respondent found it necessary to rely upon Sale 2, a building that is nearly four times the size of the subject, when there were sales of much more similar size available. The Board gives no further consideration to Respondent's Sale 2 for this reason.

Both parties adjusted the sales for location. Petitioner considered three sales from Grand Junction and adjusted each sale downward from 10% to 20% based upon proximity to Interstate 70. Respondent presented two sales from Grand Junction. Sale 1 was not adjusted for location due to lack of visibility and highway proximity. Sale 3 was adjusted downward 15% based on comparison of 5-year median industrial sale prices in Grand Junction versus Montrose. The parties have general agreement that the Grand Junction market is superior with Respondent contending that better exposure and access in Montrose balances a more or less average Grand Junction location.

In an attempt to narrow the differences the Board considered Respondent's Sale 1 and Sale 4 along with Petitioner's Sale 2 and Sale 4. These buildings are similar to one another in the majority of features but differ in location. The sales are illustrated as follows:

SALE	R-1	R-4	P-2	P-4
SALE PRICE	$1,100,000	$825,000	$800,000	$667,000

LOCATION	Grand. Jct.	Montrose	Grand Jct.	Montrose
$/SQUARE FOOT	$74.73	$62.38	$56.40	$47.47
BUILDING SIZE	14,720	13,225	14,184	14,052
LAND/BUILDING RATIO	7.8/1	14.7/1	6.51/1	8.65/1
AGE	2008	1972	2007	1996

Direct comparison between Respondent's Sale 1 and Sale 4 indicates Grand Junction commands a 16.5% premium over a similar property in Montrose. Comparison of Petitioner's Sale 2 and Sale 4 suggests the premium is 15.8%. Given the other obvious variances, the Board considers a 15% location adjustment to be appropriate between the two areas.

The witnesses varied in other adjustments. Both parties recognized differences in land to building ratios ranging from 1% per unit of difference (Respondent) to almost 3% per unit for Petitioner. Age adjustments were applied ranging from .67% to 1% per year of difference. The adjustments applied for building size were inconsistent for both witnesses with Mr. Moyer adjusting 0% for size differences of 9,280 square foot (Sale 1) to 22,970 square foot (Sale 3) but then adjusting sale 4 a minus 5% for a difference of 10,775 square feet. Petitioner's adjustments were no less confusing with Sale 2 adjusted a minus 5% for a difference of 9,816 square feet while Sale 4 is adjusted by a minus 10% for a difference of 9,948 square feet.

The Board concludes the following adjustments are appropriate given the information presented by the parties:

Time Adjustment:	No adjustment supported
Location:	Grand Junction is 15% superior
Land to Building Ratio:	2% per unit of difference
Age:	0.75% per unit of difference
Size:	No adjustments supported
Economic Characteristics	No adjustment supported

The following is a reconstructed adjustment grid with the Board's adjustments as derived from the witness reports. The analysis does not include Respondent's Sale 2 which the Board has rejected as not comparable and Petitioner's Sale 5 that was dismissed at the hearing.

	R 1	R 3	R 4	P 1	P 2	P 3	P 4
SALE $	$1,100,000	$4,300,000	$825,000	$965,750	$800,000	$800,000	$667,000
Time:	No Adjustment						
Location:	-15%	-15%		-15%	-15%	-15%	
Land/Bldg.		9.6%	-12.6	-9%	-3.8%		
Age	-4.5%		22.5%	9%	-3.8%	15%	4.5%
Size							
Adj. $	$885,500	$4,067,800	$906,675	$820,888	$619,200	$800,000	$697,015
Adj. $/SF	**$60.16**	**$86.60**	**$68.56**	**$43.46**	**$43.65**	**$41.76**	**$49.60**

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The adjusted indications are as follows:

P 3	$41.76
P 1	$43.46
P 2	$43.65
P 4	$49.64
R 1	$60.16
R 4	$68.56
R 3	$86.60

Respondent's Sale 4, at the low end of the range, is clearly inferior in quality based upon the photo on page 17 of the witness's report. The lower end of the range is dominated by Petitioner's sales while values above $50.00 per square foot are indicated by Respondent's transactions. The Board has adopted $55.00 per square foot as the best supported unit value. Application of this unit value to the building size produces the following indication:

24,000 square feet (times) $55.00 = $1,320,000

Neither party gave much weight to the income approach.

The Board's reconstructed indicators of value are as follows:

Market:	$1,320,000
Cost:	$1,650,000
Income:	Not considered

Both parties considered the cost approach to be appropriate due to the potential influence of business value. The parties also agreed upon the limited number of comparable sales upon which to rely. The Board found conflicting information and adjustments to both analyses in the market approach. For the reasons above, the greater reliance upon the cost approach and the limited number of market transactions upon which to rely, the Board has given generally equal weight to the above indications and concluded to an actual value of $1,500,000.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect.

The Board concludes that the 2015 actual value of the subject property should be reduced to $1,500,000.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to $1,500,000.

The Montrose 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-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 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-nine 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 5th day of May, 2016.

BOARD OF ASSESSMENT APPEALS

Gregg Near

Debra A. Baumbach

Debra A. Baumbach

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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