

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 66666

Petitioner:

MERCHANT DRIVE, LLC,

v.

Respondent:

**MONTROSE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 30, 2016, MaryKay Kelley and Amy J. Williams presiding. Petitioner was represented by Bo Nerlin, Esq. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties stipulated to the admission of Petitioner's Exhibit 23 and Respondent's Exhibits A and B.

The subject property is described as follows:

**105 Merchant Drive
Montrose, Colorado 81401
Montrose County Schedule No. R0060136**

The subject property is a 6,788 square foot, two-story, office/retail/warehouse building located on a 0.85-acre site. The subject was built in 2008; is of steel frame construction, good quality and in average condition.

Petitioner is requesting an actual value of \$440,000 for the subject property for tax year 2015. Respondent assigned a value of \$710,000 for the subject property for tax year 2015 but is recommending a reduction to \$625,000.

Petitioner called Mr. James Lucarelli, Member, Merchant Drive, LLC, as a witness. Mr. Lucarelli testified that the subject office/retail/warehouse building was built-to-suit for an Arctic Cat dealership. In June of 2008, shortly after completion, Planet Motor Sports took occupancy of the building. However, according to Mr. Lucarelli, the business was forced to close its doors prior to the end of the five-year lease. Grand Mesa Motor Sports then occupied the building on a month to month basis for a short period of time at a gross lease rate of \$5.00 per square foot. The subject then sat vacant for approximately two and a half years, with the current tenant occupying as of March 2016 at a gross lease rate of \$5.48 per square foot.

Mr. Lucarelli testified that the property had been listed for \$799,000 beginning in January of 2013, with a price reduction to \$689,888 in August of 2013. Only one offer was received, said offer being \$350,000, which was rejected.

Mr. Lucarelli directed the Board's attention to Exhibit 23, an appraisal prepared by Aaron Ward, MAI, with Valbridge Property Advisors. Respondent objected to the use of this appraisal as Mr. Ward was not present for cross-examination. The Board admitted the appraisal while acknowledging that the evidentiary weight of Mr. Ward's appraisal is diminished without Mr. Ward being present to testify.

Referencing Mr. Ward's appraisal, Mr. Lucarelli stated the subject's location on Grand Avenue provides poor visibility from the highway. He also reviewed the sales used within the Sales Comparison Approach of Mr. Ward's report. Four sales and one listing were utilized, ranging in sale price from \$225,000 to \$825,000, or \$29.89 to \$70.31 per square foot. After adjustment, the sales supported a value for the subject within a range between \$62.38 and \$70.31 per square foot. A value of \$65.00 per square foot was selected, resulting in an indication of value via the Sales Comparison Approach of \$440,000, rounded.

Mr. Lucarelli went on to review the Income Approach prepared by Mr. Ward. Within the Income Approach a triple net lease rate of \$5.00 per square foot was selected, from which a 15 percent vacancy and collection loss was deducted, producing a net operating income of \$26,242. A 9.5 percent capitalization rate was applied resulting in an indicated value via the Income Approach of \$290,000, rounded.

After considering the approaches to value within the appraisal prepared by Mr. Ward, Mr. Lucarelli concluded to a final value for the subject property of \$440,000.

During cross examination, Mr. Lucarelli responded affirmatively that Sale Nos. 2 and 3 were REO, or bank owned sales, and offered that bank owned sales can be typical market transactions. When asked why he did not sell the subject for the offered \$350,000, he responded that the ownership was not under financial pressure and elected not to sell at that time.

Respondent called Mr. Brook Moyer, Appraiser, Montrose County Assessor's Office, as a witness. Mr. Moyer described the subject location as having indirect, distant visibility from the highway. Mr. Moyer explained that he selected the best comparables available and went on to review the sales utilized within his Sales Comparison Approach. Four sales and one listing were

utilized, ranging in sale price from \$347,500 to \$825,000, or \$62.38 to \$99.79 per square foot. After adjustment, the indicated value range narrowed to \$592,827 to \$625,199, or \$87.33 to \$92.10 per square foot. Based upon the sales and analysis presented, Mr. Moyer concluded to a value of \$618,000, or \$91.00 per square foot via the Sales Comparison Approach.

Mr. Moyer testified that three of the four sales utilized were not in Montrose, but they were selected for their comparability, with appropriate adjustments applied. He stated that Sale No. 4, while located in Montrose, needed many adjustments and was less comparable than the other three sales located in Grand Junction and Olathe. He testified that REO/bank owned sales did have a negative effect on the Montrose market during the statutory data collection period, but did not define the market. Reviewing the sales used by Petitioner, Mr. Moyer pointed out that Sale No. 2 is located adjacent to a large dairy and considered an inferior location, and Sale No. 3 is located on a gravel road in an industrial area with no retail influences. With respect to Sale No. 4, it too had no retail influence and was located away from the main Townsend Avenue commercial corridor. Mr. Moyer further stated that the listing used by Petitioner actually had a list price of \$255,000, not \$225,000 as stated in Mr. Ward's appraisal.

Mr. Moyer briefly reviewed his Cost Approach which indicated a replacement cost new less depreciation of \$529,200 for the subject building and site improvements, to which a land value of \$100,000 was added, resulting in an indication of value via the Cost Approach of \$629,000, rounded.

Moving to the Income Approach, Mr. Moyer presented six, triple net lease comparables ranging from \$6.00 to \$12.00 per square foot, from which, after adjustment, he concluded to a net rental rate of \$8.25 per square foot. After applying a ten percent vacancy and collection loss, 6 percent expense ratio and a 7.5 percent capitalization rate, a value of \$632,000 was indicated via the Income Approach. Mr. Moyer testified that he was valuing fee simple estate and, therefore, looked to stabilized lease rates.

After considering the approaches to value, Mr. Moyer concluded to a final value for the subject property of \$625,000, or \$92.07 per square foot.

During cross examination, Mr. Moyer testified that Sale No. 3 sold with a long-term lease in place and Sale No. 4 was on a much larger site, 4.5 acres, but that he had made appropriate adjustments for both. He affirmed that Sale No. 1 within Mr. Ward's report and Sale No. 4 within his report were the same sale. Mr. Moyer stated that the Montrose County Assessor's Office does utilize some, but not all, REO/bank owned sales, considering time on the market and condition of sale, along with other factors, when deciding if they are appropriate, valid sales to be used for comparison purposes.

On re-direct, Mr. Moyer re-asserted that the comparables he selected were the most comparable sales available and he was confident that their location on side-street markets was similar to the subject even though three of the four sales were in the larger Grand Junction and Olathe areas. Further, Mr. Moyer testified that a ten percent vacancy rate was a stabilized rate over a typical holding period for office/retail/warehouse properties. However he stated that vacancy for the subject property class during the statutory time period was closer to 20 percent.

Respondent assigned an actual value of \$710,000 but is recommending a reduction to \$625,000 to the subject property for tax year 2015.

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

Based upon the evidence and testimony presented, the Board finds that Petitioner's sales are largely inferior to the subject and Respondent's sales are largely superior to the subject. Additionally, the Board disagrees that a vacancy rate over a typical holding period for office/retail/warehouse products is appropriate. Actual vacancy, that of 20 percent as stated by Mr. Moyer, accurately reflects market conditions during the statutory data collection period. Overall, particularly considering Petitioner presented an appraisal report without making the report's author available to testify, Respondent's evidence and testimony is considered more credible. Therefore, with more weight given to data presented by Respondent, a value of \$562,000 is appropriate for the subject property. This value is based on Respondent's Income Approach, but utilizing a 20 percent vacancy rate as opposed to ten percent. Specifically, a 20 percent vacancy and collection loss and 6 percent expense ratio are deducted from the potential gross income of \$56,001, producing a net operating income of \$42,113. After application of a 7.5 percent capitalization rate, a value of \$562,000, or \$82.79 per square foot, is concluded for the subject property.

ORDER:

The petition is granted. The Montrose County Assessor is directed to change the assessment records of the subject property to reflect a value of \$562,000.

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 27th day of October 2016.



BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley

Amy J. Williams

Amy J. Williams

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

Milla Lischuk
Milla Lischuk