

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 69521**

Petitioner:

**MARY F. RUTHERFORD,**

v.

Respondent:

**DENVER COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on May 8, 2017, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2016 actual value of the subject property.

The subject property is described as follows:

**2030 Clay St. Denver, CO  
Denver County Schedule No. 02321-33-039-000**

Petitioner and Respondent stipulated to admission of their witnesses Mr. Todd Stevens and Mr. Greg Feese as experts, and admission of Petitioner's Exhibits No. 1 and 2 and Respondent's Exhibits A, B, and C.

The subject consists of a three building commercial property located at 2030-2050 Clay St. in the Jefferson Park neighborhood of Denver. Year(s) of construction were 1955-1962 and the buildings contain approximately 15,798 square feet. Although the property includes the three buildings, Petitioner and Respondent have stipulated that the value of the property lies in the land. Land area is approximately 37,190 square feet or 0.85 acres, zoning is C-MX-5 through Denver, and all utilities are publically provided. Both Petitioner and Respondent agree that the highest and best use for the subject would be redevelopment into a higher density residential property.

Petitioner is requesting an actual value of \$1,100,000 for the subject property for tax year 2016. The Board of Equalization's (BOE) assigned value is \$2,790,000 which is supported by Respondent's appraisal of the property at \$2,827,400.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market	\$1,100,000
Income:	Not Developed

Petitioner considered by did not provide a cost or income approach indicating that these approaches would not be appropriate given the true value of the property is found in the land.

Petitioner's witness, Mr. Todd Stevens, President of Stevens and Associates Cost Reduction Specialists, Inc. developed a market (sales comparison) approach that included six comparables ranging in sales price from \$20.67 to \$81.80, and in size from 12,898 to 32,219 square feet. The major adjustments to the sales consisted of location, zoning, and physical characteristics. Petitioner made no adjustment for date of sale. After adjustments were made, the sales ranged from \$21.70 to \$64.39 on a per square foot basis. With emphasis on all of the comparables, Mr. Stevens concluded to a final value of \$40.00 per square foot or \$1,487,600 for the subject land. In addition, Mr. Stevens estimated demolition costs at \$157,980 and entitlement and tenant buyout costs at \$236,970 for total costs of \$394,950 resulting in a final concluded value via the market approach of \$1,100,000, rounded.

Respondent presented the following indicators of value:

Cost:	\$3,086,600
Market	\$1,106,000
Income:	\$888,500

Respondent's witness, Mr. Greg Feese, a Certified General Appraiser with the Denver County Assessor's Office, considered and developed all three approaches; however, similar to Petitioner placed the most weight relative to market value on the value of the land. Relative to land value, Mr. Feese's market approach referenced five comparables ranging in sales price from \$64.59 to \$94.10 per square foot, and in size from 12,591 square feet to 58,028 square feet. The major adjustments to the sales consisted of time (date of sale), location, and zoning. After adjustments were made, the sales ranged from \$71.04 to \$94.10 on a per square foot basis. With emphasis on all of the comparables, Mr. Feese concluded to a final value of \$79.00 per square foot or \$2,938,010 for the subject land. Mr. Feese then added \$1,000 for the residual value of the improvements concluding to a final value of \$2,939,000 for the subject. The cost (vertical improvements) and income approaches were referenced by Respondent, but given no weight in the final analysis.

The major points of argument between the parties were the comparables used, and the adjustments (specifically locational, zoning, and time) to the comparables as well as Petitioner's deduction for demolition, entitlements, and tenant buyout.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2016.

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). The Board concurs with the parties that the best indication of market value for the subject property is found in the value of the land. After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Petitioner’s testimony, analysis, and adjustments relative to the location, zoning and date of sale of the comparables, as well as the deduction for demolition, entitlements, and tenant buyout lack the necessary support to be considered credible. The Board further concludes that Respondent’s comparable sales and adjustments to the sales, more accurately provide realistic support for a conclusion of market value for the subject property. The majority of sales used by Respondent was located in similar locations, reflected market driven adjustments, and were representative of the market during the required statutory period. The Board also concludes that estimating the residual value of the current improvements at \$1,000 is customary and supportable.

In addition, Respondent argued that the credibility of Petitioner's witness was impacted because he was receiving a contingency fee. The Board finds that Petitioner's contingent fee arrangement with its expert was clearly disclosed to the Board. The Board also finds that the evidence presented was presented as a consulting service -- not an independent appraisal. The information was provided by an interested party under a disclosed contingent fee arrangement and not as an independent appraisal from a disinterested third party. As the trier of fact, the Board weighed the evidence provided by the tax agent in light of the disclosed bias shown by the contingent fee arrangement.

### **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 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 6th day of June, 2017.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra M. Baumbach

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

