

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TALK TO THE HAND LLC,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 73925</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 13, 2018, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The parties stipulated to four development factors regarding the impact of the flood plain on the subject. However, there was no agreement as to the impact on value.

Subject property is described as follows:

**16005 Mount Vernon Road, Golden, Colorado 80401
Jefferson County Schedule No. 300215502**

The subject is an 8,592-square foot bar and restaurant situated on a 3.20-acre site. A portion of the subject was originally constructed in the early-1900s, with several subsequent additions. The parties concurred that the southeastern portion of the subject was impacted by flood plain.

Petitioner is requesting an actual value of \$645,000 for the subject property for tax year 2017. Respondent assigned a value of \$1,759,809 for the subject property for tax year 2017 but is recommending a reduction to \$1,587,969.

Petitioner’s witness, Douglass P. Agne, MAI and Colorado Certified General Appraiser, presented a sales comparison and income approach to support the value of \$645,000. The cost

approach was considered not applicable by Mr. Agne, due to the age of the subject improvements and difficulty determining accrued depreciation.

Respondent's witness, Michael H. Earley, MAI, SRA, Colorado Certified General Appraiser with the Jefferson County Assessor's Office, presented all three approaches to support the reduced value of \$1,587,969.

A taxpayer's burden of proof in 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. A taxpayer who meets the burden of demonstrating that an assessment is incorrect need not also show an alternative valuation under the market approach to prevail. *Reiber v. Park Cnty. Bd. Of Equal.*, 14CA6 (Colo. App. 2014).

The impact of the flood plain on value presented a significant difference between the parties. The Board places the greatest weight on the testimony of Charlie Ehringer, Managing Member of Talk to the Hand LLC. Mr. Ehringer testified that the improved portion of the property was in the flood plain, which significantly limited potential renovation or future capital improvements to the early-1900s structure. The Board found persuasive Mr. Ehringer's testimony that his prospective redevelopment of the subject had been denied by the County due to the requirements of the flood plain, and that alternative uses were not financially feasible.

After consideration of all three approaches to value, the Board finds that the sales comparison approach provided the most reliable indication of value for the subject, which is an owner-occupied, restaurant building. The cost approach was considered less relevant due to the age of the subject improvements and difficulty determining accrued depreciation. Further, valuation of the flood-impacted site rendered the cost approach unreliable. The income approach was given limited consideration as the Board was convinced the subject offered limited appeal to a tenant or ultimately an investor primarily due to the flood plain status.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect. Petitioner's witness presented five restaurant property sales that transacted within a 24-month base-period, which bracketed the subject for size. Four of the sales were of properties located in Jefferson County. All five sales received upward adjustment for superior land-to-building ratios, as well as downward adjustment for lack of flood plain issues. After adjustment, the sales indicated a range in value of \$50.75 to \$88.05 per square foot. Sales 3 and 5 were given the greatest consideration, producing an average adjusted price of \$74.14 per square foot. The appraiser concluded to a value of \$75.00 per square foot, or \$645,000, rounded.

The Board did not find Respondent's sales comparison approach credible. Mr. Earley presented six comparable sales, none of which were located in Jefferson County, and two of which were located in a highly desirable downtown Denver area. Mr. Earley included sales of both the fee simple and leased fee interest, with no detail provided to the Board and no adjustment considered. Most importantly, the Board was not convinced that Respondent's analysis adequately reflected the diminished value of the subject resulting from the flood plain.

The Board concludes that the 2017 actual value of the subject property should be reduced to \$645,000.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$645,000.

The Jefferson 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).

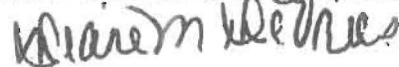
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 31st day of August, 2018.

BOARD OF ASSESSMENT APPEALS

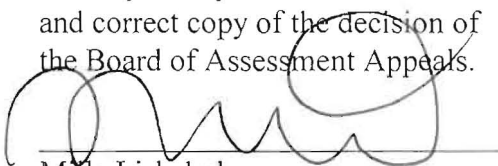


Diane M. DeVries



Sondra W. Mercier

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



Milla Lishchuk