

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GEOFFREY BURNEY,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>OTERO COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 75837</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 28, 2020, Debra Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey Jr., Esq. Respondent was represented by Kathryn L. Schroeder, Esq. Petitioner is protesting the 2019 actual value of the subject property.

**EXHIBITS AND WITNESSES**

Petitioner’s Exhibits 1-11, and 13; along with Respondent’s Exhibits A, B and C, were admitted as evidence. Petitioner’s witness, Mr. Greg Baker, Certified General Appraiser with Bearing Commercial Appraisal, was designated as an expert witness. Respondent’s witness, Mr. Leslie Fellows, Ad Valorem Appraiser with the Otero County Assessor’s Office, was also designated as an expert witness.

**DESCRIPTION OF THE SUBJECT PROPERTY**

**27151 Harris Road, La Junta, Colorado 81050  
Otero County Schedule No. 114065**

The subject is a 208,945-square foot light manufacturing/warehouse building situated on a leased site. The building was constructed in 2004; expanded and renovated in 2013.

The subject property's actual values for tax year 2019, as assigned by the County Board of Equalization (CBOE) below and as requested by each party, are:

<b>CBOE's Assigned Value:</b>	\$5,114,735
<b>Respondent's Requested Value:</b>	\$5,114,735
<b>Petitioner's Requested Value:</b>	\$2,375,000

Petitioner contends that the subject suffers from significant functional obsolescence due to its size within a rural location.

### **BURDEN OF PROOF**

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Commission*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of the BAA, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993).

### **FINDINGS OF FACT**

The Board was convinced that: "Otero County and rural Eastern Colorado has been losing population to the larger cities on the Front Range. Employment growth and demand for new space is only going to come from outside influences, or limited expansion from existing industries." Ex. 13, p. 26. Data presented to the Board indicated a population decline in the areas within a 5-, 10-, and 20-mile radius of the subject. Despite some growth in the most recent years, total employment remains below the 2009 level, representing a compounded annual decline of 0.6%. Ex.13, pp. 14-16.

Petitioner contends: "Industrial properties in rural markets are typically much smaller and fewer overall than those in populated areas. The typical largest uses are in the 20,000 to 25,000 SF range, properties that are 50,000 SF not uncommon, but not occurring in every smaller community. Properties near 100,000 SF typically are in transportation or population hubs with adequate workers, buildings of these sizes can be 100s of miles apart and frequently only include one or two in a community. Properties above this size are rare." ...and "A larger number of properties will compete with a small pool of users. A significant discount from cost and a

longer marketing time is expected.” Ex.13, p. 26. The Board finds this assertion compelling, as the comparable sales from both parties were heavily weighted to the significantly larger Pueblo, Colorado market.

The Board found Petitioner’s estimate, that the subject was over-improved by approximately 100,000 square feet, to be supported by an industry study performed by NAIOP and U.S. Energy Information Administration (EIA). That study indicated “manufacturing uses have a square foot per employee amounts ranging from 429 to 1,552/1,559. The average of all manufacturing industries is 892 square feet per worker.” Ex. 13, pp. 27-28.

The Board finds that the sale of Petitioner’s Sale 7 occurred in 2012, and the sale of the subject property occurred in 2006. *See* Ex. 13, p. 35. The sales of Petitioner’s Sales 1-6 all occurred between 2014 and 2017. *See id.*

### APPLICABLE LAW

Standard appraisal methods are defined in the reference book published by the Appraisal Institute, *The Appraisal of Real Estate* (14th ed. 2013).

Functional Utility is defined as: “The ability of a property or building to be useful and to perform the function for which it is intended according to **current market tastes** and standards; the efficiency of a building’s use in terms of architectural style, design and layout, traffic patterns, and the size and type of rooms.” *Id.* at 259 (emphasis added).

Superadequacy is defined as: “An item of incurable functional obsolescence caused by a superadequacy is a property component that exceeds **market requirements**.” *Id.* at 624 (emphasis added).

Under section 39-1-104(10.2)(a), C.R.S. (2019), county assessors are required to collect and analyze sales that occurred within an 18-month period. If sufficient sales are not available during the 18-month period to adequately appraise the property, the assessor may use sales that occurred in preceding 6-month increments for a total maximum period of 5 years. *See id.* The statutory 5-year period for properties appraised in the 2019 tax year begins on June 30, 2013 and ends on June 30, 2019. *See id.*

### CONCLUSIONS

The Board was convinced that larger properties like the subject, especially those located in rural areas, likely suffer from significant functional obsolescence. More specifically, the

subject suffers from incurable superadequacy. Both parties applied an adjustment for functional obsolescence within their analysis of the subject.

The Board concludes that the sale of the subject property and the sale of Petitioner's Sale 7 occurred prior to the extended statutory data collection period, and therefore these sales are not appropriate for appraising the subject. The sales of Petitioner's Sales 1-6 occurred within the extended statutory data collection period, and therefore the Board concludes that these sales are appropriate for appraising the subject.

Petitioner presented data from six sales indicating total depreciation ranging from 40.9% to 83.1%. See Ex. 13, p. 35. The data indicated a mean of 65.9% and a median of 68.1%. After deducting relative physical depreciation, the sales indicated remaining obsolescence ranging from 20.9% to 51.2%, with a mean of 36.8% and a median of 37.1%.

Petitioner applied appropriate appraisal methodology as promulgated by the Appraisal Institute and outlined in the *Appraisal of Real Estate 14<sup>th</sup> edition*, page 631 in calculating functional obsolescence of \$3,922,821, representing 47.8% of replacement cost new. See Ex. 13, p. 33. This falls well within the range of 20.9% to 51.2%, indicated by extraction from market sales.

Adding physical depreciation of 20%, total depreciation of 67.8% was deducted. This also falls within the range of 40.9% to 83.1% indicated by extraction from market sales. Petitioner's adjustment was based on compelling market data and peer supported appraisal methodology.

The Board rejects Petitioner's additional deduction of 10% for economic obsolescence as it was not supported by evidence from the market. Therefore, after applying physical depreciation and functional obsolescence, and not economic obsolescence, the Board concludes to a value of \$2,652,661 for tax year 2019 based on a recalculation of Petitioner's analysis.

Conversely, Respondent made a subjective adjustment based solely on the current owner's actual use and reportedly part of a prior negotiation for settlement. Ex. A, pp. 31-32. Respondent provided insufficient probative evidence from the market or from peer appraisal methodology to support their adjustment.

### **ORDER**

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$2,652,661.

The Otero County Assessor is directed to change his/her records accordingly.

### **APPEAL RIGHTS**

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 31<sup>st</sup> day of March 2020.



**BOARD OF ASSESSMENT APPEALS**

Drafting Board Member:

Sondra W. Mercier  
Sondra W. Mercier

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

Jacqueline Lim  
Jacqueline Lim

Concurring Board Member:

Debra A. Baumbach  
Debra A. Baumbach  
*Concurring without modification pursuant to § 39-2-127(2), C.R.S.*