

Board of County Commissioners of Lincoln County
Agenda for July 26, 2013

9:00 Call to order and Pledge of Allegiance

9:00 The Commissioners will be acting as the County Board of Equalization and will conduct a hearing on an appeal from Albrook Partners, LLC, represented by Steven Frank, on Lot 8, Block 4, Replat #3 to the Market Place Subdivision Plat 1 to the Town of Limon, also known as 2486 Williams Avenue, Limon

The Board of Lincoln County Commissioners met at 9:00 a.m. on July 26, 2013, in order to act as the County Board of Equalization. The following attended: Chairman Ted Lyons, Commissioners Greg King and Doug Stone, County Administrator Roxie Devers, County Attorney Stan Kimble, and Clerk to the Board Corinne M. Lengel.

Chairman Lyons called the meeting to order and asked Commissioner King to lead the Pledge of Allegiance. The commissioners then acted in their capacity as the County Board of Equalization and conducted a hearing on an appeal by Albrook Partners, LLC, on Lot 6, Block 4, Replat #3 to the Market Place Subdivision Plat 1 to the Town of Limon, also known as 2486 Williams Avenue, Limon. Also in attendance were Steven Frank, representative for Albrook Partners, LLC, County Assessor Jeremiah Higgins, and Assessor's office employees Renita Thelen, Christi Hollenbaugh, Kim Hilferty, and Amy Vice.

Mr. Lyons stated that each party would have fifteen minutes to present their case, five minutes for rebuttal, and two minutes for summation. Ms. Devers acted as time keeper and the hearing was tape-recorded. The tapes are on file in the County Clerk's vault.

Mr. Kimble first reminded the commissioners that they were sitting in a quasi-judicial function, and no matter what they may have heard about the subject property or situation personally, they needed to remember that they could not use that knowledge in their decision-making process.

Mr. Frank began by stating that he believes the property value at 2486 Williams Avenue in Limon is way too high; the Assessor has it valued at \$686,796, but it should be valued at \$330,000, in his opinion. Mr. Frank said he believed the Assessor's value was flawed, so he spoke with several different appraisers to gather his information. He added that he had gotten some of his information from IRS publication #561 and believes that the Assessor looks at fair market value, which he thought was the price a property would sell for on the open market. Mr. Frank stated that although he is not a professional appraiser, he does know that three approaches should be used when giving value to a property; the market approach, the cost approach, and the income approach. He did not believe that the Assessor used the income approach when placing value on this particular property. According to Mr. Frank's calculations, the market approach would value the property at \$330,000 and the income approach would make it \$280,000, yet by using the cost approach, he found it to be \$693,000, which is what the Assessor used. He was told by the appraisers he spoke with that they work the numbers to come up with a reasonable amount a person would pay for a piece of property. The cost approach includes determining replacement costs, and depreciation must also be figured in, so the cost approach is not as accurate as the market approach, in his opinion. Also, according to Ed Tomlinson, who was the former assessor in Arapahoe County, Mr. Frank said that the cost approach addresses insurance values more so than fair market values. He added that Deputy Assessor Renita Thelen told him that she had excluded the actual property when looking for comparable sales, because his purchase had actually occurred after the designated "look-back period" by twelve days. However, he argued that there was a contract in place on the property during that time, so they should have been able to use it. He added that it was an arm's length

deal; they had no personal contact with the parties they purchased the property from, and on July 10, 2012, when they bought it, it sold for \$212,500. He went on to say that there are not many properties that their property could be compared to regarding sales, but there were a few and he used those to come up with his market approach figures. Mr. Frank also stated that his property was for sale for \$350,000 during the two year look-back period, but there were no offers made on it so it did not sell. He also wanted the board members to know that he had spoken with a professional broker and asked what a reasonable capitalization rate would be. They determined that eight percent would be reasonable, but Mr. Frank said that when he asked the assessor, he was told they would have to use thirteen percent to value the property if they were to use the income approach.

Ms. Devers informed Mr. Frank that his time was up, and Lincoln County Assessor Jeremiah Higgins and Deputy Assessor Renita Thelen then spoke, both citing their licensed appraiser numbers. Mr. Higgins stated that the methods and techniques used to appraise real property in a real property assessment system are known collectively as the "mass appraisal" technique. Properties are valued using a process of mass appraisal defined as: "The process of valuing a group of properties as of a given date using standard methods, and allowing for statistical testing." Mr. Higgins also explained that all three approaches to value were considered, but the Cost approach is the most reliable and based on Marshall and Swift Building Cost Data. Replacement cost of a building is the total cost of construction required to replace the building, including labor, materials, sales tax and insurance, among other things. The Market approach includes multiple adjustments on all comparable sales that are arm's length transactions after the confirmation process is complete. The Income approach was not used, due to lack of information. Also, Mr. Higgins said that for the tax year 2013, the level of value for the 60-month period from June 30, 2007, to June 30, 2012, were used for determining actual value. Finally, he stated that although the petitioner purchased the property on July 10, 2012, for \$212,500, the sale could not be considered because it did not fall within the proper timeframe. He added that he and his staff are governed by state statute, and they are required to use the recorded date of the sale, and not any other date. Mr. Higgins also said that the comparable sales they use must be adjusted up or down to the subject property; the subject property cannot be adjusted, and asking price cannot be used to derive value. The Assessor used three comparable property sales when determining the value of 2486 Williams Avenue in Limon, which averaged out to a value of \$723,000. Mr. Higgins said he had already given Mr. Frank's property a break by reducing the value to \$686,796, as he felt that it was "out of its element" and an overbuild for Lincoln County.

Mr. Frank then stated that he did not have a problem with the numbers derived from the Cost approach; he simply believed that Mr. Higgins should have used all three approaches to determine the value, rather than just the one. Mr. Higgins responded that they did consider the other approaches, simply disqualified them because the Cost approach was the best approach. He added again that the selling price cannot be used to derive the value; however, it can be used to support the value, and will be considered eventually, during the next valuation period.

Mr. Frank again asked why they did not use the Income approach and Ms. Thelen responded that they could not do a mass appraisal on one piece of property.

Mr. Higgins stated that Mr. Frank leases the property for \$4.33 per square foot, which comes to \$674,479, so he has basically put an income value on it himself. Mr. Frank said that it is a three-year lease period, but Mr. Higgins told him they hadn't known that as they did not have that information. Mr. Frank said he leases the property for \$60,000 per year.

In summation, Mr. Frank said that the Cost approach shows a value of \$693,000, but a prudent investor would not pay that, so the Market approach of \$330,000 and the Income approach of \$280,000 would be more in line with what a prudent investor would pay. He stated he felt the Assessor's method was flawed by not using all three approaches and felt the property value should be changed to \$330,000.

Mr. Higgins stated that, in summation, he would like for the board members to uphold his decision and deny the petitioner's request to reduce the value of the property at 2486 Williams Avenue, Limon, Colorado, based on the fact that the value was already reduced by \$37,621 and was then reduced by another \$71,966 in 2013. Mr. Higgins said that \$686,796 is a fair and equitable valuation for the property when compared to that of three sales which occurred during the statutory sales period.

Mr. Kimble said the board members would need to make a decision by August 5, and Mr. Lyons said they would discuss it and most likely make a decision as soon as everyone left. However, Mr. Higgins, Ms. Thelen, and Mr. Frank were called back to answer a couple of questions.

Mr. Lyons asked Mr. Frank how much insurance he carries on the property, but Mr. Frank did not know, although he was willing to get the information.

Mr. Higgins explained that Mr. Frank and Albrook Partners, LLC is simply an investment company; they are not running the business, and Mr. Frank agreed that he is simply looking for a rate of return on his investment, hoping that it will one day appreciate in value.

Mr. Lyons said that he has invested in a lot of commercial properties over the years and always feels that if it will pay for itself in ten years he has made a good investment. Based on that formula, he stated that the value of Mr. Frank's property would be \$600,000 if he is making \$60,000 per year on it.

Mr. Kimble asked for clarification, stating that once the mass appraisal is concluded it is his understanding that residential property is valued using the Market approach, agricultural, or oil and gas is valued using the Income approach, and commercial property is valued using primarily the Cost approach. Mr. Higgins responded that unless otherwise stated, they are required to use all three approaches; however, they must then decide which approach is best reflected for that property. He added that they are trying to find a market value, but more importantly, they are there to determine the taxable value, as they are in the tax business. Mr. Higgins said they

are governed not only by state statute, but by the Assessor Reference Library put out by the Division of Property Taxation, as well. He went on to say that had they used the Market approach, the comparable properties would have had to be depreciated, which would have made it even worse for Mr. Frank.

Mr. Lyons wanted to know if Mr. Frank was protesting the value of the property or the value of the building, but Mr. Higgins said they have to use the total value of the property. He added that the original owners paid too much for the land and too much for the building as well, and he has been very sympathetic to that fact.

Ms. Thelen put in that any of the other garages in Limon are owner-operated, which also made it difficult to compare Mr. Frank's property, as he leases it, and is the only one who does so. She said she looked for Income information but it is too hard to justify if it is obtained from another county. She added that she'd been told that Limon Chrysler leases their bays, but no one would talk to her about it.

Mr. Frank thanked the board members and left, and after a brief discussion, Mr. Stone said he believed they should deny the appeal. Mr. King agreed, stating that he felt it was not an arm's length sale but a distress sale due to foreclosure and he believes that the county needs to be consistent.

Mr. King made a motion to adopt a resolution to deny the appeal from Albrook Partners, LLC, on Lot 6, Block 4, Replat #3 to the Market Place Subdivision Plat 1 to the Town of Limon, also known as 2486 Williams Avenue, Limon, Colorado. Mr. Stone seconded the motion, which carried unanimously.

At a regular meeting of the Board of County Commissioners of Lincoln County, Colorado held in Hugo, Colorado on July 26, 2013, there were present:

Ted Lyons, Chairman	Present
Greg King, Vice Chairman	Present
Douglas D. Stone, Commissioner	Present
Stan Kimble, County Attorney	Present
Corinne Lengel, Clerk of the Board	Present
Roxie Devers, County Administrator	Present

when the following proceedings, among others, were had and done, to-wit:

RESOLUTION #854 It was moved by Commissioner King and seconded by Commissioner Stone to adopt the following resolution:

WHEREAS, pursuant to C.R.S. 39-8-106 (1), the Board of County Commissioners will act as the Board of Equalization and hear appeals filed by taxpayers who disagree with the property value established from the determination of the County Assessor: and

WHEREAS, a petition for a change of value was received from Albrook Partners, LLC, represented by Steven Frank, for the property at Lot 6, Block 4, Replat #3 to the Market Place Subdivision, Limon, CO, schedule #R258545314006; and

WHEREAS, the petitioner used available data and analyzed it using the three approaches in valuing property, market, cost and income, to support changing the 2013 value for the subject property from \$686,796 to \$330,000; and

WHEREAS, the Assessor presented evidence through use of the cost approach, which is the preferred method for commercial property, that the value of \$686,796 placed on the subject property is fair and equitable when compared to that of three sales which occurred during the statutory sales period;

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Lincoln County, acting as the Board of Equalization, that the petition from Albrook Partners, LLC requesting a change of value on the subject property from \$686,796 to \$330,000 is denied for the following reasons:

1. The sale of the subject property was not an arm's length transaction.
2. The Market approach is not a good method to value commercial property value and be consistent.
3. There were no real comparables to the subject property.
4. An adjustment was made to the property since it was too big in comparison to other property in the county.

Upon roll call the vote was:

Commissioner King, Yes; Commissioner Stone, Yes; Commissioner Lyons, Yes.

The Chairman declared the motion carried and so ordered.

Board of County Commissioners
of Lincoln County

ATTEST:

Clerk of the Board

With no further business to come before the County Board of Equalization, the meeting was adjourned and the commissioners convened as the Lincoln County Board of Commissioners to discuss other business.

Chairman Lyons called the meeting to order and the commissioners met with County Treasurer Jim Covington and County Assessor Jeremiah Higgins regarding their computer system, CCI, which has declared Chapter 11 bankruptcy. Mr. Covington said the company has had a seventy-five percent reduction in staff over the past three-to-four months, so they knew things were not going well. He and Mr. Higgins have been looking at another company, Tyler Technologies, to see if they would be able to convert to their system, but it may be up to a year before they can begin conversion, as the company is extremely backed up right now.

Mr. Lyons wanted to know how changing companies would affect the cost as he recalled one of the main reasons they had changed systems in the first place was because CCI was so much cheaper. Mr. Covington said the monthly costs would be close to what they pay now but they are still putting together numbers for the initial start-up fees.

Mr. Kimble spoke up and said that CCI is definitely in violation of their contract and the Assessor and Treasurer are justified in wanting to terminate it. One of the biggest issues, however, is that the computers and programs are being leased; the county does not own them, and Mr. Higgins said he received an email that CCI will be auctioning off their assets, which is concerning. He added that he and Mr. Covington were told they wouldn't do that, but communication has been a big problem with the company and he isn't sure he believes them.

Mr. Kimble stated that he would like permission from the Board to contact a bankruptcy attorney to request a course of action, as he does not know much about the federal bankruptcy court or those laws. He added that they may need to get a protective order from the court, but that is one of the reasons he would prefer to contact a bankruptcy attorney who specializes in such cases.

Mr. Higgins put in that he and Mr. Covington have looked at other companies, but either they did not have both an Assessor/Treasurer combined package, or they were too expensive. He added that his office could manage day-to-day activities, but there are too many large projects coming up for both departments to try and get along without changing over to a new company.

Mr. Covington said that Tyler Technologies will most likely want \$30,000 for the first three quarters, but there is a chance they can reduce their monthly payment, or go with a lease-purchase option where they would own their own equipment and programs after six years once the system is installed. Mr. King asked why they would want to own them when computer programs and updates occur so frequently, but Mr. Covington said those costs would be included in their maintenance package which is an annual cost.

Mr. Kimble stated that Chapter 11 bankruptcy is a reorganization bankruptcy, where Chapter 7 bankruptcy involves liquidation. He cautioned that the creditors will have the opportunity to

attack the company's plan in court, and sometimes a judge will convert a Chapter 11 bankruptcy case to a Chapter 7 bankruptcy case.

Mr. Covington said that there is a possibility that another company is waiting to absorb CCI, but they do not know because CCI won't tell them anything. He added that Tyler Technologies is already used by the majority of Colorado counties and his staff, as well as Mr. Higgins's, has seen a demonstration of Tyler programs in other counties and they all seem to like it. However, they are all greatly concerned and Mr. Higgins said they want to get moving on it as soon as possible.

Mr. Kimble informed the Board that the first meeting of the creditors is to be held on August 23, and he hopes they can get an order stating CCI cannot reclaim their computers and programs until the county has another means of operation in place. He added that his concern is that any action the county takes may be in violation of the bankruptcy court, but he believes the order is needed to allow normal processes in both offices to continue. Unfortunately, it may come down to which party the judge is more sympathetic toward; the government or the company filing the bankruptcy. Mr. Kimble said that he will contact a bankruptcy attorney, meet with Mr. Covington and Mr. Higgins, and then advise the commissioners on what transpires.

Once Mr. Covington and Mr. Higgins had gone, Mr. Kimble said that he'd spoken with the Logan County attorney again about setbacks on wind turbines and was told that they do not have anything in the Logan County zoning regulations that pertain to setbacks; they simply allow the landowners to make their own decisions regarding their property and leases.

Mr. Stone said that he'd spoken with a gentleman with NextEra and asked if they would consider putting up a building in the county, specifically at the fairgrounds, and was told that they had done so before and it was not an unreasonable request.

Mr. Kimble stated he'd checked into the claim that the county may be held liable if the track and/or arena are not watered during an event held there, but could not find a clear answer to the question. He argued that at some time an accident may occur because the county *did* water the areas and felt it may be a Catch-22 situation.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on July 30, 2013.

Corinne M. Lengel, Clerk to the Board

Ted Lyons, Chairman