

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
10/4/2023 3:05 PM
AUDREY GARCIA
CLERK OF THE COURT
Dominique Sanchez

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

**APPELLEE/CROSS-APPELLANT/PETITIONER
SANDOVAL COUNTY ASSESSOR'S OPPOSITION TO
APPELLANTS/CROSS-APPELLEES/RESPONDENTS'
MOTION TO DISMISS CROSS-APPEAL FOR LACK OF STANDING**

Appellee/cross-appellant/petitioner Linda P. Gallegos, in her official capacity as Sandoval County Assessor, opposes the "Motion to Dismiss Cross-Appeal for Lack of Standing" filed by appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff.

The DeHoffs had filed a protest of the valuation placed on their property by Gallegos. Their protest was heard by the Sandoval County Valuation Protests Board. The DeHoffs filed an appeal of the Board's decision to this Court. Gallegos then filed a cross-appeal. Subsequent to the filing of the DeHoff's motion, Gallegos filed a petition for a writ of certiorari under Rule 1-075, NMRA.

The DeHoffs claim that the Sandoval County Assessor lacks standing to file a cross-appeal by citing NMSA § 7-38-28, NMSA § 39-3-1.1, and Rule 1-074, NMRA. There is support in caselaw for this position. *Giddings v. SRT-Mountain Vista, L.L.C.*, 2019-NMCA-025, ¶ 13, 458 P.3d 596. But the New Mexico Constitution provides that an aggrieved party shall have an absolute right to one appeal.” N.M. Const., Art. VI, Sec. 2. An “aggrieved party is one whose personal interests are adversely affected.” *State v. Castillo*, 1980-NMCA-020, ¶ 4, 94 N.M. 352, 610 P.2d 756. The right of appeal accorded by the New Mexico Constitution cannot be abridged by statutes or rules of court. *State v. Montoya*, 2011-NMCA-009, ¶ 5, 149 N.M. 242, 247 P.3d 1127 (2010). It is “an absolute, constitutional right.” *State v. Heinsen*, 2005-NMSC-035, ¶ 9, 138 N.M. 441, 121 P.3d 1040. The valuation placed on property by county assessors is presumed to be correct. NMSA 1978, § 7-38-6 (1981). When a valuation protests board rules against an assessor’s valuation, as happened here, then the assessor is an aggrieved party for the purpose of an appeal. See *Giddings*, 2019-NMCA-025, ¶¶ 13–16.

Another division of this Court earlier this year ruled on a cross-appeal filed by Gallegos in another appeal from the Sandoval County Valuation Protests Board. *RR Premiere Realty, L.P. v. Gallegos*, 13th Dist. No. D-1329-CV-2022-01364 (Aug. 14, 2023). A copy of decision is attached as exhibit A. In that case, the notice of appeal cited the same authorities as the notice of appeal in this case. A copy of the notice of appeal is attached as exhibit B. Neither the appellant—who was represented by counsel—nor the Court took issue with Gallegos’s notice of appeal. Gallegos’s cross-appeal was considered on the merits.

That is because in New Mexico, “notices of appeal, even where technically defective, should be liberally construed to allow consideration of the case on the merits.”

Schultz ex rel. Schultz v. Pojoaque Tribal Police Dept., 2010-NMSC-034, ¶19, 148 N.M. 692, 242 P.3d 259. The prime directive of the Civil Rules is that they “shall be construed and administered to secure the just, speedy and inexpensive determination of every action.” Rule 1-001, NMRA. The New Mexico Supreme Court has elaborated on this philosophy vis-à-vis appeals:

The courts must ensure that the procedural rules expedite rather than hinder this right [to appeal]. Behind every evaluation of judicial procedure is the recollection that our modern system evolved in response to the involuted procedures of the courts of England in which the substantive issues of a case could be lost in a labyrinth of procedural rules. Modern rules promote expedience and uniformity and attempt to balance constitutional rights with the need for the efficient administration of justice. As we have previously stated, it is the policy of this court to construe its rules liberally to the end that causes on appeal may be determined on the merits, where it can be done without impeding or confusing administration or perpetrating injustice. Procedural formalities should not outweigh basic rights where the facts present a marginal case which does not lend itself to a bright-line interpretation. Where there are two possible interpretations relating to the right to an appeal, that interpretation which permits a review on the merits rather than rigidly restricting appellate review should be favored.

Trujillo v. Serrano, 1994-NMSC-024, ¶9, 117 N.M. 273, 871 P.2d 369 (cleaned up).

Even if the Court were inclined to grant the DeHoffs’ motion, it has been mooted by Gallegos filing a timely petition for a writ of certiorari directed to the Sandoval County Valuation Protests Board. The petition was filed under the terms of Rule 1-075, NMRA. County assessors such as Gallegos may appeal decisions of valuation protests boards to District Court under Rule 1-075, NMRA, as the assessors are “aggrieved parties” for purposes of the constitutional right to appeal in Article VI, Section 2. *Giddings v. SRT-Mountain Vista, L.L.C.*, 2019-NMCA-025, ¶¶ 13–16, 458 P.3d 596.

The motion should be denied.

(Signature Page Follows)

Respectfully submitted:

MICHAEL ESHLEMAN,
SANDOVAL COUNTY ATTORNEY

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Certificate of Service

I certify that on October 4th, 2023, I e-mailed a copy of this document to:

Kenneth & Kathleen DeHoff
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/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

EXHIBIT A

TO

**APPELLEE/CROSS-APPELLANT
SANDOVAL COUNTY ASSESSOR'S OPPOSITION TO
APPELLANTS/CROSS-APPELLEES'
MOTION TO DISMISS CROSS-APPEAL FOR LACK OF STANDING**

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

RR PREMIERE REALTY, LP,
A foreign limited partnership,

Appellant/Cross-Appellee

v.

Case No. D-1329-CV-2022-01364

LINDA P. GALLEGOS,
IN HER CAPACITY AS
SANDOVAL COUNTY ASSESSOR,

Appellee/Cross-Appellant

**ORDER REVERSING THE SANDOVAL COUNTY VALUATION PROTESTS BOARD
AND AFFIRMING THE COUNTY ASSESSOR'S VALUATION**

This matter is before the Court on RR Premiere Realty, LP's *Notice of Appeal*, filed December 5, 2022; *Statement of Appellate Issues*, filed February 6, 2023; the *Sandoval County Assessor's Response to Appellant's Statement of Appellate Issues*, filed March 8, 2023; *Notice of Cross-Appeal*, filed December 6, 2022; *Sandoval County Assessor's Statement of Appellate Issues*, filed February 13, 2023; the *Owner's Response to Sandoval County's Statement of Appellate Issues*, filed March 27, 2023; and *Sandoval County Assessor's Reply to Response to Statement of Appellate Issues*, filed April 14, 2023. The record from the Sandoval County Valuation Protest Board (the Board) was filed with the Court on December 16, 2022.

Pursuant to a *Motion to Dismiss Appeal as Against Sandoval County Valuation Protests Board*, filed on December 28, 2023, on February 23, 2023, the Court dismissed with prejudice the County Assessor's cross-appeal as to the Sandoval County Valuation Protests Board, to which the Assessor lodged no objection. The dismissal of the cross-appeal as to the Sandoval

County Valuation Protests Board did not affected the Assessor's cross-appeal as to RR Premiere Realty, LP.

Upon request of the Sandoval County Assessor, and pursuant to NMRA Rule 1-074(0) and Appellant's *Notice of Non-Availability*, filed on April 24, 2023, the Court heard oral argument from both parties on their separate appeals on June 27, 2023.

Acting in its appellate capacity, this Court may set aside, reverse or remand for further proceedings the Board's decision if:

1. The Board acted fraudulently, arbitrarily or capriciously;
2. Based upon the whole record on appeal, the decision of the Board is not supported by substantial evidence;
3. The action of the Board was outside the scope of authority of the agency; or
4. The action of the agency was otherwise not in accordance with law.

(NMRA Rule 1-074(R)).

RR Premiere Realty, LP (the "Owner"), was the owner of the subject property at the time the Sandoval County Assessor completed its property tax valuation for tax year 2022.

The Owner has been in the cinema business since 1985, and acquired the subject property in 2009. The cinema maintained 14 screens, and opened to the public in 2011. In response to the State of New Mexico's COVID-19 public health and safety orders, the Owner shut down the entire cinema in March 2020, and reopened it in May 2021. The cinema remained open until the Owner sold the property to Legacy Church in August 2022 for seven million dollars, at which time Legacy Church leased 8 of the 14 screens back to Owner, which the Owner continued to operate as a public cinema.

The Board conducted its valuation review hearing on November 8, 2022. For purposes of valuation, the Owner presented evidence of value according to the comparable sales method and the cost approach method of valuation (both methods permitted pursuant to NMSA 1978 §7-36-15(B), which provides that "...the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods..."). The Assessor presented evidence according to both methods, but relied only upon evidence of the cost-method for valuation. In its decision and order, the Board applied the cost-method and established a value for the subject property of \$6,477,000.00 (an amount higher than the value asserted by the owner of \$4,500,000.00, but lower than the County Assessor's assessed 2022 value of \$9,265,588.00). Both parties appeal the Board's Decision.

Appellant Owner identifies four issues for appeal. They are:

1. Whether the Board's decision is void and should be remanded because the Board acted contrary to law by refusing to consider the comparable sales approach to valuation presented by the Appellants.
2. Whether the Board's decision is void and should be remanded because the Board acted contrary to law by refusing to consider the income approach to valuation presented by Appellants.
3. Whether the Board's decision should be vacated because the Board acted arbitrarily when it failed to consider the evidence of comparable sales and the evidence of value based on income approach.

4. Whether the Board's decision should be vacated because the Board deprived the appellants of procedural due process by refusing to consider the evidence of comparable sales and the evidence of value based on the income approach.

Cross-Appellant Assessor identifies one issue on appeal:

- A. The Sole issue raised by the Assessor is whether the Board's valuation is supported by substantial evidence as to depreciation and obsolescence, and whether, in the absence of substantial evidence as to depreciation and obsolescence, the Board's Decision and Order is arbitrary and capricious and an abuse of discretion.

The Court addresses each of these separately.

I. Owner's Appellate Issues:

1. Comparable Sales

The Owner argues that the Board failed to consider comparable sales in its analysis. This Court disagrees. The Board clearly considered the comparable sales data provided by both parties, but concluded the comparable sales data was unreliable and was not necessarily reflected in the market as of January 1, 2022. Specifically, the Board noted that "[o]n the whole, we do not consider the comparable sales approach for the property in question, in the given market, with the evidence on the record, to be a reliable indicator of value." Under the circumstances, the Board did not act contrary to law in rejecting the comparable sales data provided.

2. Income Approach

The Owner's appraisal rejected the use the income approach because "[d]ue to the COVID-19 pandemic, the theater has been generating no income... and our analysis is for valuation of the real property, in a 'go dark' analysis without consideration of business income," which the Appraiser noted would not "...compromise the credibility of the results rendered

herein” (Decision and Order of the Board, paragraph 29, page 5, internal citations omitted). Thus the Owner presented no evidence as to income generation. The Assessor also provided no evidence in support of an income-based valuation. As such, the Board did not act contrary to law when it concluded that the Income Approach did not form a reliable basis” to valuation of the property (Decision and Order of the Board, paragraph 32, page 5, internal citations omitted).

3. Arbitrary Decision

The Owner argues that the Board acted arbitrarily by reaching its decision without considering all the evidence presented at the hearing. As noted by the Assessor in her response, the Board did not exclude any evidence, and it is not the Board’s duty to present the case. That obligation falls to the parties. In fact, the Board considered evidence of comparable sales from the Owner, but rejected it for justifiable reasons. Moreover, the Board rightly found that the Owner had not submitted any evidence for the income approach to valuation.

There is no indication that the Board acted arbitrarily by failing to consider evidence of comparable sales and evidence of value based on the income approach.

4. Procedural Due Process

Pursuant to NMSA §7-38-6, “values of property for property taxation purposes determined by the... assessor are presumed to be correct.” An owner may rebut that presumption, but has the “...burden of coming forward with evidence showing that the values for property taxation purposes [as asserted by the assessor]... are incorrect.”

Challenges to the Assessor’s valuation go before the Board in a hearing, which is to be “conducted so that an ample opportunity is provided for the presentation of complaints and defenses.” NMSA 1978 Sect. 7-38-27. Here, the Owner made no showing that it was deprived of any opportunity to present its case, and the record before this Court confirms that all evidence

offered for presentation was admitted and considered. Failure to offer or present evidence is not equivalent to a failure to admit or consider evidence.

The Board did not deprive the Owner of due process.

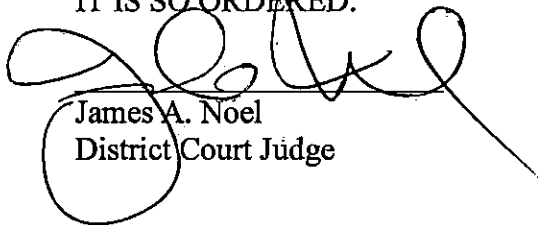
II. Assessor's Appellate Issue

A. Depreciation and Obsolescence

As to depreciation, The Board's use of 11 years as the effective age of the building is not supported by substantial evidence. To the contrary, the Assessor provided testimonial evidence of an effective age of 5 years, which is presumed to be correct. The Owner did not present evidence to overcome that presumption. As to obsolescence, the Board adopted a figure of \$4M based on obsolescence of long-term movie trends, but such figures and trends were not supported by substantial evidence.

The Court REVERSES the Board's Decision and Order that valued the subject property at \$6,477,000.00, and AFFIRMS the Assessor's valuation of \$9,265,588.00 for the subject property.

IT IS SO ORDERED.



James A. Noel
District Court Judge

I do hereby certify I served a copy of this document electronically to all parties on the date of filing /s/ JT

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

EXHIBIT B

TO

**APPELLEE/CROSS-APPELLANT
SANDOVAL COUNTY ASSESSOR'S OPPOSITION TO
APPELLANTS/CROSS-APPELLEES'
MOTION TO DISMISS CROSS-APPEAL FOR LACK OF STANDING**

**THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF SANDOVAL
STATE OF NEW MEXICO**

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
12/6/2022 4:27 PM
AUDREY GARCIA
CLERK OF THE COURT
Mariana X Torres

**RR Premiere Realty, LP,
a foreign limited Partnership,**

Appellant,

v.

No. D-1329-CV-2022-01364

**Linda P. Gallegos,
SANDOVAL COUNTY ASSESSOR,**

Appellee,

v.

Sandoval County Valuation Protests Board,

Cross-Appellee.

NOTICE OF CROSS-APPEAL

COMES NOW, Linda P. Gallegos, Sandoval County Assessor (“Appellee”), by and through her attorneys of record, Sandoval County Attorney Michael Eshleman and Deputy Sandoval County Attorney John M. Butrick, pursuant to NMSA 1978 Section 7-38-28 (2015), NMSA 1978 Section 39-3-1.1, and SCRA 1-074 and for her Notice of Cross-Appeal states:

1. The party taking this cross-appeal is Linda P. Gallegos, Sandoval County Assessor.
2. This cross-appeal is taken against RR Premiere Realty, LP, and the Sandoval County Valuation Protests Board.
3. The name and address of the Appellee’s appellate counsel are the same as the persons filing this cross-appeal.
4. This appeal is from the Decision and Order of the Sandoval County Valuation Protests Board filed November 8, 2022, a copy of which is attached hereto as Exhibit A.

5. This appeal is being timely filed within the thirty (30) day timeframe permitted by NMSA 1978 Section 39-3-1.1.

Respectfully submitted,

SANDOVAL COUNTY ATTORNEY
Michael Eshleman

By: /s/ John M. Butrick

Michael Eshleman

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CERTIFICATE OF SERVICE

I hereby certify that this Notice of Cross-Appeal was filed through the Odyssey File and Serve program, thereby serving all counsel of record, or otherwise emailed or mailed this 6th day of December 2022, to the following:

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/s/ John M. Butrick
John M. Butrick

**BEFORE THE SANDOVAL COUNTY
VALUATION PROTESTS BOARD**

In the Matter of the Protest of:

RR PREMIERE REALTY LP

Account R152913

DECISION AND ORDER

This protest came for hearing before the Sandoval County Valuation Protests Board (the "Board") on September 23, 2022. All applicable statutes, regulations, argument, and all evidence admitted at hearing were fully considered by the Board, and the Board, being fully informed in the premises, finds as follows:

1. The protest was timely filed, and the Board has jurisdiction over the subject matter and the parties.
2. The Assessor ("Assessor") was represented by County Attorney Michael Eshleman and Deputy County Attorney John Butrick, who appeared with Chief Deputy Assessor Richard Shanks, Senior Appraiser Elias Salas and Appraiser Brian Jackson.
3. The taxpayer protesting the valuation ("Taxpayer") was represented by Alexandra Lopez of Lastrapes, Spangler & Pacheco, P.A., who appeared with client representative Gary Moore.
4. Taxpayer received notice of the hearing, and received the *Information Pamphlet for Protesting Property Owners*.
5. The Board considered all exhibits, testimony and argument of the parties, except as noted herein, and was otherwise fully informed regarding the issues.
6. The subject property ("Subject Property") is in Rio Rancho, Sandoval County, New Mexico.

7. The 2022 assessed value of the Subject Property is \$9,265,588.
8. The Taxpayer's asserted value is \$4.5 million, amended at hearing from the protested amount of \$3,088,529.

Protest Structure

9. NMSA 1978, Section 7-38-6 states that, "Values of property for property taxation purposes determined by the... assessor are presumed to be correct." In order to rebut the presumption, "the taxpayer has the burden of coming forward with evidence showing that the values for property taxation purposes... are incorrect."
10. We look to a taxpayer to show that "the assessor did not follow the statutory provisions of the Act or by presenting evidence tending to dispute the factual correctness of the valuation." *New Mexico Baptist Foundation v. Bernalillo County Assessor*, 1979-NMCA-102 ¶ 3.
11. "If the taxpayer overcomes the statutory presumption of correctness, the burden shifts to the assessor to prove that his or her method of valuation utilized a generally accepted appraisal technique." *2727 San Pedro LLC v. Bernalillo County Assessor*, 2017-NMCA-008 ¶ 20.
12. Our obligation is to determine "market value as determined by application of the sales of comparable property, income or cost methods," and in so doing to "apply generally accepted appraisal techniques." NMSA 1978, §7-36-15(B).
13. We note that "board members may use their knowledge and experience to evaluate evidence admitted." § 3.6.7.36(H)(1) NMAC.
14. We are also mindful that our order must be supported by substantial evidence in the record. Section 39-3-1.1(D)(2); Rule 1-074 NMRA.

15. Therefore, the Board employs the evidence that is in the record to best arrive at the “current and correct” valuation for the subject property. Section 7-36-16.

Approaches to Value

16. The Assessor refers us to *Bakel v. Bernalillo County Assessor*, 1980-NMCA-173 ¶ 9, for the proposition that “If reliable comparable sales data can be reasonably obtained, the comparative sales method must be used.”
17. However, *Bakel* relied on a prior version of Section 7-36-15(B) that reads “Unless a method or methods of valuation are authorized... the value of property for property taxation purposes shall be its market value as determined by sales of comparable property... if that method cannot be used due to the lack of comparable sales data for the property being valued, then its value shall be determined by using an income method or cost methods of valuation.” (internal punctuation and citations omitted).
18. The current version of Section 7-36-15(B) reads: “Unless a method or methods of valuation are authorized... the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority... shall apply generally accepted appraisal techniques.” NMSA 1978, Section 7-36-15(B) (2008).
19. Therefore, *Bakel* does not appear to be good law with respect to choice of valuation method.
20. While the statute permits use of any of the three methods, or a combination of them, generally accepted appraisal techniques often provide more specific guidance as to which approach is an appropriate method of solving a given problem: “In the value reconciliation

process, the validity of the methods and result of each approach [cost, income, sales] are weighed objectively to arrive at the single best and most supportable conclusion of value.” William L. Ventolo, Jr. & Martha R. Williams, *Fundamentals of Real Estate Appraisal* 275 (8th ed. 2005).

The Subject Property and the Parties’ Evidence of Value

21. The Subject Property is a ±44,965 square foot, class “C” 14-screen movie theater built in 2011 on ±8.2 acres of land located at 1000 Premiere Pkwy SE in Rio Rancho, Sandoval County New Mexico.
22. The principal basis of the Taxpayer’s protest is that the assessed valuation failed to account for the impact of the COVID-19 pandemic and associated legal restrictions and changes in theater patron behavior.
23. These are of course relevant and important factors. However, quantifying them based on the evidence in the record is a difficult task indeed.
24. The Taxpayer offers an MAI appraisal report of the Subject Property with an effective date of August 19, 2020 (i.e., after inception of the pandemic) (the “Appraisal”).
25. The Appraisal presents both a cost approach and a sales comparison approach.
26. The Assessor objects that use of the Appraisal y RR Premier Realty LP for a property tax protest is not consistent with the intended use or the intended user of the report, as stated in the report. Appraisal, Pg. 1, and as indicated in the Appraisal cover letter (which may not be intended to be provided to a potential seller) as “The purpose of this appraisal is to aid Legacy Church with their internal decision-making process regarding this potential sale, and to aid in their negotiations with the seller.”

27. We understand the Assessor's concern, that an appraisal that is at least partially for use to aid in negotiations could tend to undershoot the value of the Subject Property. Although that does not disqualify its use, it is worth bearing in mind.
28. We do note that the purpose of the appraisal is described within the appraisal itself as "to estimate the market value of the subject property, as-is, fee simple estate. Our determination is that the FF&E is fully depreciated, and his minimal contributory value, so this analysis is based on the real property only." Appraisal, Pg. 1.

Income Approach

29. The income approach was not used because "The property has principally been used as a going concern for a movie theater, generating income primarily through theater ticket and concessions. Due to the COVID-19 pandemic, the theater has been generating no income on this basis, and our analysis is for valuation of the real property, in a "go dark" analysis without consideration of the business income. Exclusion of this approach is not considered to compromise the credibility of the results rendered herein." Appraisal Pg. 4.
30. Likewise, the Assessor did not provide an income approach.
31. Our request for a copy of the current lease was denied.
32. While the operating status of the Subject Property has changed since October, 2020, the Board perceives that the last several years of income have been exceedingly unusual, and therefore do not form a reliable basis for value.

Comparable Sales Approach

33. The Appraisal's sales comparison approach (on which it relied to conclude the \$4,500,00 value) relies on five theater sales, from September 2017 through May of 2020 (the latter being the only one to occur during the pandemic), and none of which are in New Mexico.

34. Sale 1 is a closed theater prohibited by deed restriction from reopening for that purpose. Sale 3 is an off-market sale for probable redevelopment. Sale 4 was a sale intended for subsequent closure. Sale 5 was also sold for redevelopment. Thus, all of the comparable sales were essentially land value sales.
35. The adjustments applied, other than for sale 3, were between 50% and 75%, which we find to be so high as to question the value of those sales.
36. The appraiser performed the analysis under certain pandemic assumptions: "As of the date of value and the date of this report, the nation, region, and market area are impacted by the COVID-19 pandemic. This could have a prolonged effect on macroeconomic conditions, though at this time the length of duration is unknown. The perceived impact on real estate varies on several factors including asset class, use, tenancy, and location. Our analysis considers available information as of the effective date." Appraisal, cover letter.
37. Therefore, the appraiser anticipated a "go dark" valuation: "Due to the ongoing COVID-19 pandemic, the cinema has not been operational for several months. Because of this, the property owners have explored liquidation of their assets." Appraisal, cover letter.
38. The Board finds that these assumptions, which may not be reflected in the market as of January 1, 2022, were reflected in the appraiser's choice of comparable sales. For this reason, we decline to consider the Appraisal's sales comparison approach.
39. The Assessor asks us to consider theater sales in Tucson (a December, 2019 pre-COVID sale at \$186 per square foot), Hickory Creek, Texas (\$70 per square foot) and a sale on Central Ave SE in Albuquerque (\$82). The Assessor also asks us to consider the sale of a medical building in Colorado Springs that was formerly a theater, which sold for \$41 per square foot.

40. It is significant that each of the Assessor's sales that occurred after the pandemic actually support the Property Owner's proposed valuation of \$4,500,00 for a 44,965 square foot building.

41. On the whole, we do not consider the comparable sales approach for the property in question, in the given market, with the evidence on record, to be a reliable indicator of value.

Cost Approach

42. The Appraisal includes a cost approach to value, at \$4,700,000.

43. The primary differences between the Taxpayer's cost approach value and the Assessor's cost approach value of \$10,420,504 are the size measurement (a discrepancy of 6,289 square feet), the accrued depreciation (36% vs. 5%) and functional obsolescence (\$4,000,000).

44. With respect to size, Exhibit 3, a floor plan, shows 44,965 as gross square footage. The Assessor reports the Subject Property as ±51,254 square feet *(Ex. B, Pg. 2) and ±47,482 square feet (Ex. B, Pg. 9). In the absence of actual evidence of measurement, we will stay with the plans as reflecting the most accurate figure, although we recognize that reality can at times differ from plans, to put it mildly.

45. As to depreciation, the Appraisal reflects an age of 9 years (now 11 years), with 16 years of economic life remaining of an expected life of 25 years, and thus a resultant accrued physical incurable depreciation of 36% (noting that the Taxpayer's appraiser "did not observe anything to suggest a different economic life"). Appraisal, Pg. 28.

46. The Appraisal's authority for the 25-year figure, is the Marshall Valuation Service (MVS), which is a generally accepted appraisal technique, "as well as observations from the market." *Id.*

47. However, the Appraisal does not cite to any specific MVS data, tables or other support for the proposition.
48. The Assessor provided us with the actual December, 2020 MVS *Life Expectancy Guidelines*, indicating that a Class C "Motion picture/cinema" of any quality has a typical building life of 40 years. Ex. B, Pg. 5.
49. We do not know the source of the 15-year discrepancy, but we find the actual table provided to be a more reliable indicator of MVS' estimation of the lifespan of such a building.
50. An effective age of 11 years for a building with a 40-year expected life yields a straight-line depreciation of 18%. Ex. B., Pg. 6.
51. For the Assessor's part, the Assessor relies on an effective age of 5 years, which results in only 7% depreciation.
52. However, the Assessor also does not offer adequate support for deviating from the structure's actual age.
53. Therefore, the Board finds that the Subject Property should be valued with an effective age equal to its actual age of 11 years.
54. Apply the resulting 18% depreciation factor to the Appraisal gives us a depreciation of \$1,728,000 vs. the 36% factor of \$3,457,800 or the 5% factor of \$480,250.
55. Thus, the depreciated replacement cost, Appraisal Pg. 3, should be \$3,877,000 rather than \$2,147,200, which results in an indicated stabilized value of \$6,477,000.
56. That leaves us with the functional obsolescence.
57. The limited evidence in the record does indicate that the cinema business has changed significantly, and likely permanently.

58. That is difficult to quantify, of course.

59. Although extracted from sales data, which as noted above may not reflect a “new mature” market, the Board finds that the assigned obsolescence is likely better correlated to long term moving trends than the comparable sales that essentially reflect land value only.

60. Therefore, we accept the appraiser’s professional opinion on this factor.

Other Considerations

61. The Property Owner’s offer of an appraisal of a different theater property, in Bryan, Texas, is not particularly helpful to our task.

62. The Property Owner also urges us to consider the assessed valuation of other comparable theater properties in the state. However, that approach does not comply with generally accepted appraisal techniques. “Taxpayer’s offer of evidence of a valuation of comparable property was not relevant.” *Peterson Properties v. Valencia County Valuation Protests Board*, 1976-NMCA-043 ¶ 11.

63. The Assessor submitted a 131-page exhibit containing various materials on “dark store” theory and valuation of big box retail stores, however the exhibit was almost entirely unused in the Assessor’s case.

64. The Board declines to take it on itself to read and analyze an exhibit that a party did not substantively address in the presentation of its case. See, e.g., *In re Estate of Heeter*, 1992-NMCA-032 ¶ 15: “This court will not search the record to find evidence to support an appellant’s claims.”

Rebuttal of the Presumption

65. This is a somewhat unique situation. The evidence, from either party, was not nearly as compelling as we would like. However, that is understandable given the unprecedented challenges facing the industry with respect to the this limited-purpose building.
66. We find that the Property Owner presented substantial evidence tending to dispute the correctness of the Assessor's valuation, and therefore overcame the presumption of correctness in the assessed value.
67. The Assessor presented us with analyses that largely followed generally accepted appraisal techniques, but with the infirmities indicated above.
68. Therefore, we proceeded to analyze the evidence in the record, limited as it was. See, *Cibola Energy Corporation v. Roselli*, 105 N.M. 774 (Ct. App. 1987): "once an error is ascertained, the Board has the power to adjust or correct the valuation in order to equalize the taxpayer's assessment."

WHEREFORE, the Board orders the valuation records of the Sandoval County Assessor for the 2022 tax year with respect to the Subject Property be amended to reflect the following value:

\$6,477,000

The Board directs the Sandoval County Assessor to take appropriate action to carry out this Order.

IT IS SO ORDERED this 8th day of November 2022



BRIANNA GONZALEZ, Chairperson
Sandoval County Valuation Protests Board

I, Brianna Gonzalez, Chairperson of the Board, certify that I sent a copy of this order to the Assessor, the Director of the Property Tax Division and by certified mail to the following on this 8th day of November 2022

RR Premiere Realty LP
019 West 4th Street
Big Spring TX, 79720-2514

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BRIANNA GONZALEZ