

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ABC DENVER TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Beldon Wright, Property Tax Advisors Inc. Address: 3090 South Jamaica Court #204 Aurora, CO 80014 Phone Number: (303) 368-0500 E-mail: Attorney Registration No.:</p>	Docket Number: 37322
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 2, 2001, Mark R. Linné and Karen E. Hart presiding. Petitioner was represented by Beldon Wright, Agent. Respondent was represented by Charles Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**T3 R67 S18 SW/4 DIF BOOK 9396-216
(Denver County Schedule No. 01183-00-028-000)**

Petitioner is protesting the 2000 actual value of the subject property, a 54,374 square foot warehouse built in 1985 and located at 5140 Colorado Boulevard.

ISSUES:

Petitioner:

Petitioner contends that the subject property has some functional obsolescence that has not been accounted for by Respondent. This obsolescence is reflected in the subject property's actual rental rate being below market rent.

Respondent:

Respondent contends that the subject property was correctly valued using all three approaches to value. A physical inspection and conversations with the property manager revealed no functional problems with the building.

FINDINGS OF FACT:

1. Petitioner's witness, Ms. Pamela Mather, General Manager of Brede Exposition Services, testified that exterior access to the property is difficult. There is no room for trucks to park, and it is unsafe and difficult to turn from the frontage road. The 5-foot embankment is in disrepair and is high maintenance. The embankment is too close to the building to allow any extended trucks to turn on the south side of the building. Therefore, they can only use one of the two available dock doors. There is no access to the back of the building, and the 3 doors on the north side of the building cannot be used. They cannot use the land on the east side of the property due to drainage issues. They have experienced vandalism to their trucks, such as stolen tires.

2. Regarding the interior, Ms. Mather testified that the pipes and sprinkler heads limit the height utility of the building: there is only 12.5 feet of working space. As a result, they have had forklifts clip the sprinkler heads. Most of the front of the building and part of the warehouse has only 8.5-foot ceilings. There are areas that do not have heating and lighting. There is limited cubic space available.

3. Ms. Mather testified that there is no lease: it is a month-to-month rental. The rent in 1997 was \$110,000.00 or \$2.00 per square foot. The 1998 rent was renegotiated to \$132,000.00 or \$2.43 per square foot. If the rent were increased to \$4.00 per square foot, she would look for a more suitable building.

4. Under cross-examination, Ms. Mather testified that the business had been at this location since 1992 or 1993, and admitted that the functional problems with the building have existed since that time. She is aware of rental rates in the area, but she has not been looking at other properties to rent. She has looked at potential sites to purchase that range from \$900,000.00 to \$1.3 million.

5. Upon questioning from the Board, Ms. Mather testified that the three north facing dock doors have no access except by railroad.

6. Petitioner's expert witness, Mr. Beldon Wright, from Property Tax Advisors, Inc.,

presented the following indicators of value:

Market:	\$1,105,000.00
Income:	\$1,348,200.00

7. Mr. Wright testified that the subject property is a 54,374 square foot warehouse built in 1965 and located at 5140 Colorado Boulevard. There is extensive office square footage. The County Board of Equalization raised the value. The assessor originally assigned a value of \$1,462,300.00.

8. Petitioner's witness did not present a cost approach to value.

9. Petitioner's witness presented an income approach to derive a value of \$1,348,200.00 for the subject property.

10. Mr. Wright testified that he calculated a value of \$1,128,600.00, based on the subject property's increased 1998 rent of \$132,000.00. He used a vacancy rate of 10 percent, due to the month-to-month lease. His capitalization rate was 10 percent. He based his value on the actual lease in place, which equated to \$2.40 (rounded) per square foot.

11. Mr. Wright also calculated a value of \$1,348,200.00, based on a market rent of \$2.90 per square foot. His market rental rate was obtained from a rental survey of 3 properties with rental rates ranging from \$2.75 to \$2.90 per square foot. His first rent comparable is located at 4801 Colorado Boulevard and is a client company. His rent Comparables 2 and 3 were obtained from RealComps.

12. Based on the market approach, Petitioner's witness presented an indicated value of \$1,105,000.00 for the subject property.

13. Petitioner's witness presented 4 comparable sales ranging in sales price from \$10.53 to \$21.62 per square foot and in size from 41,352 to 59,985 square feet. After adjustments were made, the sales ranged from \$11.27 to \$20.32 per square foot.

14. Mr. Wright testified that he studied 4 comparable sales that occurred in the area of the subject. He adjusted the sales for location, land-to-building ratio, construction type, age, and office area. He gave the most weight to Sale 3, as he considered it to be the most comparable.

15. Mr. Wright determined the subject property value to be \$1,348,200.00, or \$24.80 per square foot, based on the income approach using market rents.

16. Under cross-examination, Mr. Wright clarified that his Exhibit A is an estimate of value, not a full appraisal report. His actual property income is based on the 1998, Form 8825 information. His 5% expenses are based on actual landlord expenses, plus reserves and management. He ignored the insurance expense on Form 8825, as the letter from ABC Denver Trust stated that the tenant paid the insurance, even though ABC paid it in 1998. Insurance is typically a tenant expense. His 10% cap rate is from the market and is based on many factors, including the age of the property.

17. Under cross-examination, Mr. Wright testified that his market rental rate of \$2.90 per square foot was from triple net lease information. He chose the upper end of the range. Under triple net leases tenants pay the property taxes, insurance and maintenance costs for the property. Triple net leases are usually less than gross rent leases, due to the expenses paid by the tenant; he did a study and found the difference to be about \$.70 per square foot. He admitted that there is no lease for the subject property to explain what expenses the tenant pays. However, he pointed out that the tenant is actually paying \$2.43 per square foot. He used market information to derive 2% for reserves, 3% for management expenses, and a 10% cap rate, but admitted that he did not present supporting documentation for these adjustments.

18. Regarding his market analysis, Mr. Wright testified that the 4801 Colorado Boulevard property was a client property. He had no supporting documentation, but he had talked to the landlord. The tenant is responsible for taxes that exceed a \$12,000.00 base year cost. He does not know what the actual taxes or insurance were for that property.

19. Mr. Wright admitted that he made an error in his calculation of rent for Rent Comparable 2. However, he would still use a \$2.90 per square foot rental rate, as it is also supported by the rent at 4801 Colorado Boulevard. Mr. Wright admitted that factors affecting rent rates are size, age, and functional obsolescence, but he did not make adjustments for these factors in his rental study.

20. Regarding his market sales, Mr. Wright testified that he adjusted Sale 1 3% for size, as it is 13,000 square feet smaller than the subject. He did not adjust Sale 4 for size, as he considered a 6,000 square foot difference to be within an acceptable range. He admitted that he made an error in his report for Sale 4: the construction adjustment should be a +2% rather than a -2%. He testified that the correction would result in an adjusted value of \$18.45-\$18.46 per square foot. The adjustment was made to account for the differences in ceiling height.

21. Mr. Wright testified that the age adjustment is only for the age differences of the properties, not for functional issues. Sale 2 is 30 years older, Sale 3 is 13 years newer, and Sale 4 is 6 years newer than the subject property. His age adjustments are not a constant figure, due in part to depreciation differences, and are subjective. The adjustments for percentage of office space are also subjective. Comparable Sale 2 had no office adjustment, as he did not know what the office area was.

22. Mr. Wright testified that he used the property located at 4747 Ivy Street for his rent survey but did not use it for his market approach, even though it sold during the base year. He did not consider the property to be similar to the subject; it would command a much higher rent than the subject due to several factors. He admitted that the sale price was \$28.85 per square foot and is similar to Respondent's value.

23. Petitioner is requesting a 2000 actual value of \$1,348,200.00 for the subject property.

24. Respondent's witness, Mr. Rick Rutt, a Certified General Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

Market: \$1,782,400.00

Cost:	\$1,620,800.00
Income:	\$1,687,900.00

25. Mr. Rutt testified that the subject property site is irregular in shape and is located on the east side of Colorado Boulevard. The structure is of concrete block construction and was built in 1965. The floor is dock high. There is an extended office area and the warehouse portion has mezzanine storage. He inspected the property on June 7, 2000. Only half of the office is used as such: the balance is used as warehouse storage. The property manager told him that there was no functional problem with the property. He feels there is adequate space to allow trucks to enter the property. The Petitioner does not own the railroad spur. His photographs show trucks being stored on the east side of the property.

26. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,620,800.00.

27. Mr. Rutt testified that he prepared a cost approach, but considered it best used for newer buildings. Therefore, he did not correlate it to the final value.

28. Based on the market approach, Respondent's witness presented an indicated value of \$1,782,400.00 for the subject property.

29. Respondent's witness presented 4 comparable sales ranging in sales price from \$28.85 to \$36.00 per square foot and in size from 40,896 to 70,304 square feet. After adjustments were made, the sales ranged from \$29.14 to \$34.69.

30. Regarding his sales approach, Mr. Rutt testified that Sale 1 is located directly south of the subject. Sale 3 is one of the same comparables Petitioner used for his rent study. His comparables were adjusted for differences in year of construction, wall height, and office area. He used the mean of all four comparables to arrive at a value of \$32.78 per square foot, for a total value of \$1,782,400.00.

31. Respondent's witness used the income approach to derive a value of \$1,687,900.00 for the subject property.

32. Mr. Rutt testified that he used a rental rate of \$4.48, a 10% vacancy rate, and a 13% expense ratio. The capitalization rate of 11.3% is the same rate used for all warehouse properties in the Denver area. The capitalization rate was developed from 16 base year sales, which had cap rates ranging from 7% to 14%. Published sources were also used with the tax rate added. He adjusts for property differences in the rental rates, not in the capitalization rate. He used a rental rate of \$4.48 that was the mean derived from a rent analysis of 5 properties. The rents in the analysis ranged from \$4.16 to \$5.18 per square foot.

33. Mr. Rutt testified that the sales and income approaches both derived values that were higher than the assigned value of \$1,583,800.00, which is also his estimate of value.

34. Regarding Petitioner's Exhibit A, Mr. Rutt testified that Petitioner's Sale 1 was a related party sale, according to confirmation research conducted by the Assessor's office with the buyers. Petitioner's Sales 2 and 4 were in poor condition at the time of sale and should not be

considered market sales without condition adjustments. Petitioner's Sale 4 has a small office area located within the warehouse itself.

35. Mr. Rutt reiterated that the warehouse manager stated that the subject property was fine for their purpose, and Mr. Rutt did not notice any functional problems when he inspected the property.

36. Mr. Rutt testified that he had reviewed Petitioner's income approaches. Mr. Rutt did a triple net assumption calculation using a net income of \$157,685.00 and a 10% capitalization rate. He arrived at a value of \$1,576,850.00, which is similar to the assigned value. Mr. Rutt noted that you would not deduct for expenses in a triple net situation.

37. Under cross-examination, Mr. Rutt testified that his rent analysis adjustments were based on mathematical ratios. Income and expense letters are sent to property owners and the adjustments are derived from that information. Regarding his market adjustments, Mr. Rutt testified that the year of construction adjustment was based on 1% for each 2-year difference in age after a 5-year age difference. The age adjustments are subjective and based on his appraisal experience.

38. Upon questioning from the Board, Mr. Rutt testified that he did not see more than one large truck at the property at the time of his inspection. He feels his adjustments are conservative. Even though some of the comparables have taller wall heights, he did not adjust for the entire height, as the areas are not all utilized in the comparables. He believes the actual rent rate received by Petitioner is below the market rate, as the owner does not want to lose the tenant. The warehouse manager confirmed that height is not a problem in the office area storage. The rear storage is for wall panels, etc. and he could not see a problem with using the area. Racking would be needed to use a 22-foot wall height anyway. The variance of sales prices used by both parties is likely due to the varying characteristics of the properties. He tried to choose sales from the middle of the range.

39. Respondent assigned an actual value of \$1,583,800.00 to the subject property for tax year 2000 but is recommending the value be reduced to \$1,462,300.00, which had been stipulated to by a previous county attorney.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2000.

2. The Board carefully reviewed all evidence and testimony as presented in this case. Both parties gave little or no weight to the cost approach and the Board agrees that such approach would be least applicable to the subject property.

3. The Board reviewed the market approach as presented by both parties. The Board gave less weight to Petitioner's sales, as there was a lack of supporting documentation for some of the sales regarding the condition of the properties at the time of sale, office area square footage, interior wall height, and access. However, the Board was persuaded by Petitioner that

access to the subject property was less than average and therefore the Board adjusted Respondent's sales by 10% to 20% for access. This resulted in a much tighter value range of \$26.23 to \$27.75 per square foot. The Board notes that Respondent's recommended reduction value calculates to \$26.89 per square foot and falls within the indicated market approach value range.

4. The Board also reviewed the income approach. The Board concluded that Mr. Wright's income calculations were based on triple net leases and, therefore, certain expenses were duplicated in his approach. The Board recalculated the potential gross income to be \$3.60 per square foot, using Petitioner's original \$2.90 per square foot market rent and adding \$.70 per square foot for the difference between a triple net and gross rent lease, as testified to by Mr. Wright. The Board then used Petitioner's deductions of 10% vacancy and 5% expenses to arrive at a net operating income of \$167,363.00. The Board then applied Respondent's 11.3% capitalization rate, which was testified to as being the rate used for all warehouse properties in the Denver area. The resultant value was \$1,481,088.00, or \$27.24 per square foot. The Board notes that this value exceeds Respondent's recommended reduction value of \$1,462,300.00.

5. The Board concluded that the reduced subject property value, as recommended by Respondent, falls within the indicated value range of both the income and market approaches and affirms Respondent's recommended value reduction.

6. The Board concluded that the 2000 actual value of the subject property should be reduced to \$1,462,300.00, with \$332,000.00 allocated to land and \$1,130,300.00 allocated to improvements.

ORDER:

Respondent is ordered to reduce the 2000 actual value of the subject property to \$1,462,300.00, with \$332,000.00 allocated to land and \$1,130,300.00 allocated to improvements.

The Denver County Assessor is directed to change his records accordingly.

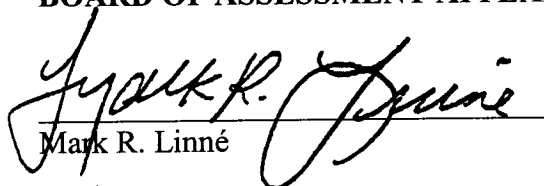
APPEAL:

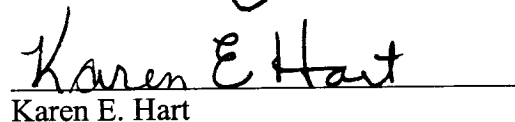
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 29th day of March, 2001.

BOARD OF ASSESSMENT APPEALS


Mark R. Linné

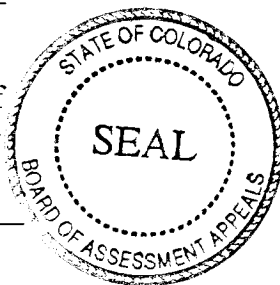

Karen E. Hart

This decision was put on the record

MAR 29 2001

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


Diane Von Dollen



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