

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>5945 BROADWAY INVESTORS LTD,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	<p>▲</p>
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas E. Downey, Jr., Esq. Address: 733 East Eighth Avenue Denver, Colorado 80203 Phone Number: (303) 813-1111 E-mail: Attorney Reg. No.: 9686</p>	<p>Docket Number: 38919</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 21, 2001, Mark R. Linné and Karen E. Hart presiding. Petitioner was represented by Thomas E. Downey, Jr. Esq. Respondent was represented by Jennifer Wascek Leslie , Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**PARCEL 3 NORTH BROADWAY INDUSTRIAL PARK SUB
(Adams County Schedule No. R0103519)**

Petitioner is protesting the 2001 actual value of the subject property, a multi-tenant industrial warehouse built in 1972 and containing 64,000 square feet.

ISSUES:

Petitioner:

Petitioner contends that the subject property is an irregularly shaped building that suffers from excessive vacancy and below market rents. Respondent has not given adequate consideration to these factors.

Respondent:

Respondent contends that the subject property was properly valued using the market and income approaches to value, relying most upon the income approach. Respondent believes the vacancy problem could be attributed to management issues.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Gary L. Sonmore, with Americo Realty Services, the managing company and owner of the subject property, testified that the building occupancy was nearly 100% when the property was first purchased. Several tenants subsequently left and only one tenant remained at the end of 1998, resulting in a 32% vacancy. He described the various actions taken to market the property for rent. They were asking \$3.00 to \$3.50 per square foot for rent. A short-term lease to Franco Furniture was let for one year at \$3.50 per square foot for 5,350 square feet. All other leases were for \$3.00 per square foot or less.

2. Mr. Sonmore testified that the 11,050 square foot space located in the northwest corner of the property is a chronic problem to lease. It is triangular in shape and has only one dock door. If other tenants are using their loading docks, they block the triangle space access.

3. Mr. Sonmore testified that as of January 1, 1999, the actual vacancy rate was 32%. As of January 1, 2000, the actual vacancy rate was 76%. As of January 1, 2001, the vacancy rate was of 52%.

4. Under cross-examination, Mr. Sonmore testified that his company is responsible for managing and leasing the subject property. They also were responsible for the property two doors down from the subject between 1993 and 1997. He testified that the subject property vacancy rates were not typical, as the usual vacancy rate in the area runs between 10% and 15%. The triangle space was leased as of December 1, 2001.

5. Under redirect, Mr. Sonmore testified that the subject property fronts on a cul-de-sac, not on Broadway. Other properties in the area have Broadway frontage.

6. Petitioner's witness, Ms. Deborah A. Tam, a Registered Appraiser with Galligan, Tam & Associates, presented the following indicators of value:

Market:	\$2,205,875.00
Cost:	\$1,613,247.00
Income:	\$1,000,000.00

7. Ms. Tam testified that she used all three approaches to value, relying most on the income approach. The immediate area is 59th Avenue and Broadway, just west of Interstate 25. It is located in an industrial park consisting of similar type buildings. There is no frontage on Broadway; access is via a cul-de-sac. The site is 193,562 square feet. There is rail access available at the rear of the property. The land-to-building ratio is 3.07:1.

8. The subject property is an industrial warehouse consisting of 63,025 square feet and was constructed in 1972. There are four rentable units. She measured the building and calculated the 63,025 square foot area, which was the county's original square footage. The property is of average quality and condition. She concurs with the owner on the percent of vacancy.

9. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$1,613,247.00. Ms. Tam testified that she used the Marshall & Swift cost service, warehouse category, to calculate the improvement value. She used a land value of \$2.50 per square foot. She did not give the cost approach much weight due to the age of the property.

10. Based on the market approach, Petitioner's witness presented an indicated value of \$2,205,875.00 for the subject property.

11. Petitioner's witness presented two comparable sales ranging in sales price from \$2,100,000.00 to \$3,200,000.00, and in size from 50,280 to 89,659 square feet. After adjustments were made, the sales ranged from \$34.16 to \$36.40 per square foot.

12. Ms. Tam testified that she used two sales located in the same industrial area as the subject. She described her two comparables and testified that both were fully occupied at the time of sale. She concluded to a value of \$35.00 per square foot. She pointed out that this was very similar to Respondent's conclusion, and that Respondent also used these two sales.

13. Ms. Tam testified that Comparable Sale 1 was leased for \$2.88 per square foot, with a renewal rate of \$3.50 per square foot. Comparable Sale 2 had lease rental rates ranging from \$4.35 to \$4.86 per square foot.

14. Ms. Tam testified that she did not rely heavily on the market approach because the subject property vacancy was not typical and the actual rents were less than average; therefore, she felt the income approach would be more appropriate.

15. Petitioner's witness presented an income approach to derive a value of \$1,000,000.00 for the subject property.

16. Ms. Tam testified that she looked at the subject property's actual income and expenses for years 1999 and 2000. She used the subject property's actual rental rate of \$3.00 per square foot, a vacancy rate of 33%, an expense ratio of 15%, and a 10% capitalization rate. She arrived at the 33% vacancy rate based on the owner reporting it as the average vacancy for the subject property.

17. Ms. Tam testified that she gave 75% weight to the income approach and 25% weight to the sales comparison approach. Her concluded value was \$1,300,000.00.

18. Under cross-examination, Ms. Tam testified that she used market information for her sales comparison approach, and looked at other rental rates in the area for the income approach. She considers the subject property's leases to be market leases, as they were let during the current time period.

19. In the market approach, Ms. Tam testified that she used a 20% economic characteristic adjustment due to the subject property's lesser rents and higher vacancy rate. She does not know why there is a problem with vacancy and lower rent rates at the subject property, previously there had been a long-term tenant.

20. Upon questioning from the Board, Ms. Tam testified that the income of the sale properties did not support their sale prices; she thinks they paid a premium in anticipation of higher lease rates upon renewal.

21. Petitioner is requesting a 2001 actual value of \$1,300,000.00 for the subject property.

22. Respondent's witness, Mr. Joseph J. Marisco, a Certified Residential Appraiser with the Adams County Assessor's Office, presented the following indicators of value:

Market:	\$2,280,000.00
Income:	\$2,000,000.00

23. Due to the age of the property, Respondent's witness did not present a value utilizing the cost approach.

24. Mr. Marisco testified that he calculated the market approach, and collaborated with Mr. Notaro, with the Adams County Assessor's Office, on the income approach and the value reconciliation.

25. Based on the market approach, Respondent's witness presented an indicated value of \$2,280,000.00 for the subject property.

26. Respondent's witness presented six comparable sale properties composed of nine buildings and ranging in sales price from \$33.25 to \$47.91 per square foot, and in size from 14,852 to 105,000 square feet. No adjustments were made to the sales.

27. Mr. Marisco testified that four of his comparable sales are buildings located in the subject subdivision. Four of the sales are the same construction type as the subject, twin-t construction. The remaining sales are located within .25 miles of the subject property. Sale 6 is of metal construction; little weight was given to this sale.

28. Mr. Marisco testified that the sales presented a wide range of value, even though they were all similar to each other. Sale 3b is across the parking lot from the subject; it is similar in land/building ratio and has rail access similar to the subject.

29. Mr. Marisco testified that he reviewed Ms. Tam's report. He agrees with her price per square foot, but does not agree with the adjustments. He believes her time adjustments were excessive as the sales occurred near the end of the base period. He did not feel adjustments were necessary as the buildings were very similar.

30. Under cross-examination, Mr. Marisco testified that the only differences he saw in his sales related to rent. Some of the properties were purchased to be owner-occupied. The sales were confirmed and are valid. He relied on Sale 3. He admitted that a portion of Sale 1 fronts on Broadway, and that both Sale 1 and Sale 2 were 100% leased at the time of sale. He testified that the subject property industrial park is well designed with good access throughout the park. He was aware of the subject property's vacancy rates at the time he prepared his market analysis.

31. Upon questioning from the Board, Mr. Marisco testified that he believes that any affect of vacancy on value would have been reflected in the market price. The comparable properties are all rectangular in shape, with the exception of Sale 2 at 5901 Broadway. The subject property was constructed in its current configuration with no subsequent additions, according to county records.

32. Respondent's witness, Mr. Frank S. Notaro, a Certified General Appraiser with the Adams County Assessor's Office, presented an indicated value of \$2,000,000.00 based on the income approach to value.

33. Mr. Notaro testified that he used a rental rate of \$3.75 per square foot. Page 27 of Respondent's Exhibit 1 is a compilation of rental rates in the subject area ranging from \$3.95 to \$4.86 per square foot. Page 28 of Respondent's Exhibit 1 is a compilation of rental rates in competing areas, which range from \$4.00 to \$4.84 per square foot, but they are newer buildings.

34. Mr. Notaro testified that his 5% vacancy rate was based on market vacancy rates in the area. Additional support was provided by the Cushman & Wakefield report. He recognizes that the actual vacancy rate of the subject property is higher. However, in a fee-simple analysis, you consider the building as being unencumbered (without leases), which is unlike a leased-fee analysis, which considers leases.

35. Mr. Notaro testified that he used the same capitalization rate as Petitioner.

36. Mr. Notaro testified that he used a 12% expense rate; typical market expenses range from 10-15%. Respondent's use of a 33% expense rate was not typical of the market.

37. Regarding Petitioner's Exhibit A, Mr. Notaro pointed out that there were no market rentals submitted in the exhibit. Ms. Tam performed a leased-fee, not a fee-simple analysis. In contrast, he presented six rentals in the same marketing area as the subject, some right next door.

38. Mr. Notaro testified that he relied most on the income approach, as there was good, confirmed rent data available.

39. Under cross-examination, Mr. Notaro testified that he did not receive data regarding the subject property lease rates until after his report was prepared. Even then he did not have copies of all the leases, and they were not signed. He agreed that a 100% occupancy rate would have an impact on the comparable sale properties.

40. Upon questioning from the Board, Mr. Notaro testified that he had no opinion as to why the subject leases were less than the market rate. He did not calculate an actual rental rate for the subject based on actual leases. He does not change his opinion now that he has further information. He did not prepare a highest and best use analysis.

41. Respondent assigned an actual value of \$2,052,820.00 to the subject property for tax year 2001, but presented an indicated value of \$2,000,000.00.

42. In rebuttal, Ms. Tam testified that 5901 Broadway and 5961 Broadway are in a better location; they front on Broadway.

43. In cross-examination, Ms. Tam admitted that she was not aware of any ingress/egress issues regarding the subject property. She believes that location is a value factor, as some of the tenants benefit from public exposure; some have public business.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. Both parties agreed that the most weight should be given to the market and income approaches to value. Both parties concluded to a somewhat similar market approach value conclusion, but varied greatly on the concluded income approach value.

3. The Board reviewed Respondent's market approach and was convinced that adjustments should have been made to the sales. Colorado Revised Statutes require sales to be adjusted to the level of value date when market conditions indicate such adjustments are warranted. One of Respondent's sales occurred in February of 1997 and most occurred in 1999. Respondent's own comparable sales, when arrayed by date of sale, appear to support a time adjustment. Also, the Board noted that the sales varied greatly in size when compared to each other and to the subject property, and the Board concluded that size adjustments should have been made to the comparables. Petitioner's witness made adjustments to her comparable sales for time and for physical differences. Therefore, the Board gave more weight to Petitioner's market value conclusion of \$2,205,000.00.

4. The Board also examined both parties' income approaches to value. The Board believes that a property's actual income performance must be considered, but market rates should be most relied upon with adjustments made for factors that may individually affect the subject property value in the eyes of a potential purchaser.

5. All witnesses in this case recognized that the subject property suffered from an excessive vacancy rate. The Board was convinced that this was a result of the subject property's shape and multi-tenant space configuration, which resulted in an atypical configuration of the area located in the L-shaped portion of the subject. The Board was convinced that this configuration results in obsolescence that should be reflected in both rental rates and vacancy rates.

6. Petitioner diligently marketed the subject property, but could not achieve rental rates in excess of \$3.50 per square foot, and had difficulty in achieving a market vacancy rate. As a result, the Board believes that Respondent should have utilized the subject property's actual maximum rental rate of \$3.50 per square foot, and should also have used a vacancy rate at the testified upper range of market vacancy. The Board concluded that a 15% vacancy rate would be more appropriate.

7. The Board recalculated Respondent's income pro-forma using the above mentioned rental and vacancy rates, and Respondent's expense rate of 12% and capitalization rate of 10%. The Board notes that Petitioner also used a 10% capitalization rate. The resulting value via the income approach was \$1,675,520.00.

8. The Board then used Petitioner's weighting scheme of 75% income value and 25% market value. The resulting blended value was \$1,807,890.00, rounded to \$1,808,000.00.

9. After careful examination of all the testimony and evidence presented, the Board concluded that the 2001 actual value of the subject property should be reduced to \$1,808,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$1,808,000.00.

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

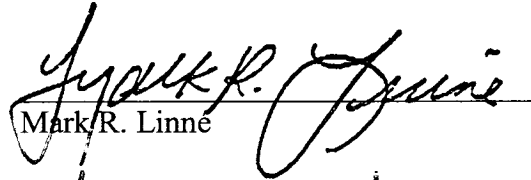
APPEAL:

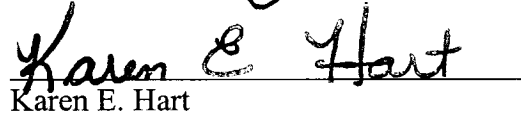
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 3^d day of January, 2002.

BOARD OF ASSESSMENT APPEALS


Mark/R. Linne

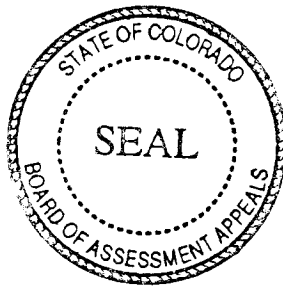

Karen E. Hart

This decision was put on the record

JAN 0 2 2002

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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