

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>W.R. SOUTHFIELD ASSOCIATES,</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: Barry J. Goldstein, Esq. Address: 950 S. Cherry Street, #320 Denver, Colorado 80246 Phone Number: (303) 757-8865 E-mail: Attorney Reg. No.: 2218</p>	<p>Docket Number: 39852</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 5, 2002, Karen E. Hart and Mark R. Linné presiding. Petitioner was represented by Barry J. Goldstein Esq. Respondent was represented by Laurie J. Heydman, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**8500 W Crestline Avenue
(Denver County Schedule No. 09154-00-012-000)**

Petitioner is protesting the 2001 actual value of the subject property, a freestanding retail store currently occupied by K-Mart, located at 8500 West Crestline, in the vicinity of Southwest Plaza. The improvements consist of 86,479 square feet of gross building area, on a site comprising 251,007 square feet, zoned B-4 by the City and County of Denver. The improvements were constructed in 1987.

ISSUES:

Petitioner:

Petitioner contends that the Respondent has inappropriately valued the subject property without proper consideration of the cost, direct sales comparison and income approaches to value.

Respondent:

Respondent contends that they have utilized cost, market, and income approaches to properly value the subject property. All three approaches to value lead to a value greater than the current assigned value. The current value asserted by the Petitioner is unreasonably low.

FINDINGS OF FACT:

1. Petitioner’s witness, Brad Weiman, MAI, Managing Director for Integra Realty Resources, and a Colorado Certified General Appraiser, presented the following indicators of value:

Market:	\$4,500,000.00
Cost:	Not Applied
Income:	\$4,425,000.00

2. Based on the income approach, Petitioner's witness presented an indicated value of \$4,425,000.00 for the subject property.

3. The witness described the subject property as a single story retail building located at 8500 Crestline Avenue, in Denver, Colorado. The property is located within the Southwest Commons Shopping Center, approximately 12 miles southwest of the Denver Central Business District. Development in the area is primarily retail in nature, due to the nature of Wadsworth Boulevard, immediately to the east, and the Southwest Plaza Mall, located along Crestline to the south of the subject.

4. The witness described the subject sub-market as stable in nature. The vacancy rate in the southwest submarket was at 5.5%.

5. The witness testified that the subject has poor visibility from Wadsworth Boulevard, due to the pad sites to the east of the subject along Wadsworth. The witness indicated that the improvements are in average condition, based on an inspection he performed.

6. Petitioner's witness presented four comparable sales ranging in sales price from \$46.99 to \$69.21 and in size from 27,451 to 106,690 square feet. After adjustments were made, the sales ranged from \$49.00 to \$55.00. With respect to the direct sales comparison approach, the witness testified that it is difficult to find sales for a property of this type. Based on a

consideration of each of the comparables, the witness concluded a unit value of \$52.00 per square foot.

7. Petitioner's witness did not present a cost approach for the subject property. While he considered the cost approach, the witness testified that the type of investors that purchase properties such as the subject do not consider the cost approach, and additionally, the application of depreciation in a property such as the subject is highly subjective. For these reasons, the cost approach was not applied in the valuation of the subject.

8. Petitioner's witness presented an income approach to derive a value of \$4,425,000.00 for the subject property.

9. The witness presented seven comparable rentals from throughout the Denver Metropolitan Area, with indicated rental rates of \$1.93 per square foot to \$8.20 per square foot. The witness testified that the rental at the upper-end of the range included \$20.00 per square foot in tenant finish allowances.

10. Mr. Weiman testified that the subject property's actual rental income under the terms of a lease signed in 1986, were supported by the typical rental rates derived from the publication "Dollars and Cents of Shopping Centers: 2000". In addition to the expenses called for in the lease, the witness indicated that additional expenses in the amount of \$.50 per square foot were applied.

11. A capitalization rate of 10.25% was applied to the net operating income of \$453,496.00 to derive a value of \$4,425,000.00 (rounded).

12. Under cross-examination, the witness testified that the entire property sold in November 2000. The witness indicated that the sale included not only the subject, but also a large amount of in-line space and various pad sites.

13. The appraiser detailed various adjustments that were applied to the subject to accommodate differences in physical and locational characteristics.

14. The witness testified that he did not adjust the older comparables for age, because the older comparables had been remodeled prior to the date of sale.

15. In re-direct testimony, the witness testified that the subject represented only a smaller portion of the greater shopping center that sold in November 2000.

16. Petitioner is requesting a 2001 actual value of \$4,425,000.00 for the subject property.

17. Respondent's witness, Douglas M. Berger, an appraiser with the Assessment Division of the City and County of Denver, and a Colorado Certified General Appraiser, presented the following indicators of value:

Market:	\$5,664,300.00
Cost:	\$5,732,300.00
Income:	\$5,401,800.00

18. Based on the market approach, Respondent's witness presented an indicated value of \$5,400,000.00 for the subject property.

19. The witness described the subject as a discount retail store constructed in 1987. The improvements contain 89,721 square feet, and 87,035 net rentable square feet. The property is located near the Southwest Plaza Mall, in southwestern Denver County.

20. Respondent's witness presented four comparable sales ranging in sales price from \$47.80 to \$94.88 per square foot and in size from 60,604 to 198,593 square feet. After adjustments were made, the sales ranged from \$67.70 to \$83.49 per square foot.

21. The witness testified that he examined properties in the southwest corridor initially, and discovered a sale at 4827 to 4887 South Wadsworth Way, which consisted of a Builder's Square and a Sam's Club. This property sold in August of 1997 for \$65.79 per square foot. The building was constructed in 1991, or approximately a four-year difference from the subject. The sale represented a "big-box" property, with minimal interior finishes. The property had a total area of 198,000 square feet, so it was quite a bit larger than the subject. A time adjustment of 9 percent was made, which provided an indicated sales price of \$71.71 per square foot. The time adjustments applied were based on a factor of one-half percent per month from the date of sale to June 30, 2000.

22. Respondent's witness next testified with respect to comparable sale #2, which he described as a K-Mart located at West 58th Avenue and Ralston Road. The demographics impacting this sale are not comparable to the southwest area. The income levels are lower, not quite like the northern border of Douglas County. The sale is an older property in an older center developed in the 1960's. The witness noted that this comparable sale was also utilized by the Petitioner's witness in his appraisal analysis. Mr. Berger indicated that his adjustments differed from the Petitioner's witness for the same property because of his impression of the physical condition of the sale and its location. He described the physical condition as being inferior to the subject. The property was an older building to which an addition had been added. The overall property was further described as functionally inadequate. He concluded that the property was best analyzed as a building that was 20 years older than the subject.

23. Comparable sale #3 was described by the witness as located on West 88th Avenue in the Brookhill Town Center. The property sold in September 1999 for \$64.48 per square foot. The property was originally built as a Fred Schmidt appliance center. Though it was a smaller property, it was nonetheless a "big-box" type property. After adjustment for time, the indicated sales price equated to \$67.70 per square foot.

24. Comparable sale #4 was described by the witness as a former Jumbo Sports location, which is now operating as a Gart Sports. The property is located on County Line Road in the southeast metro area. The property is newer than the subject, and was built in 1993. The

location is superior to the subject, given its proximity to the Park Meadows Mall. The indicated sales price was \$83.49 per square foot.

25. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$5,732,300.00.

26. Mr. Berger testified that he did not place much reliance in the valuation conclusions of the cost approach due to the difficulty of estimating depreciation. He noted, however, that the application of the approach follows the same general estimates as Marshall Valuation cost estimates.

27. Respondent's witness used the income approach to derive a value of \$5,401,800.00 for the subject property.

28. The witness testified that he examined a total of four properties, including three discount retail properties and one "big-box" property. The witness stressed that a discount retail property such as the subject was different from a "big-box" retail use. The degree of finish in discount retail properties was greater than the finish present in "big-box" properties. Based on the four properties utilized in the income analysis, with a range of rents of \$6.50 to \$9.07, the witness applied a rental rate of \$7.25 per square foot. The witness further described income and expense data supplied by the Petitioner that appeared to validate and support that level of rental, based on data that indicated that all expenses attributable to the rental is \$701,000.00 per year, and includes common area expenses and property taxes.

29. The witness discussed information previously testified to by the Petitioner's witness, Mr. Weiman. He specifically detailed that several of the leases utilized by Mr. Weiman should not have been used, or were for properties that differed significantly from the subject, and required adjustment.

30. The witness testified under cross-examination that he placed very little reliance on the cost approach.

31. Mr. Berger testified that he inspected all of the properties he included in his sales analysis. He described the comparable in the Brookhill Town Center as including some in-line retail.

32. The witness testified that he placed more reliance on the income approach than on the market approach. The witness testified that he was unaware of the date that the leases he used were actually entered into. He noted that the database he pulled the comparable data from included only those leases from the applicable base period of January 1, 1999 through June 30, 2000.

33. The witness testified that though he had not applied a vacancy allowance in his income analysis, he probably should have.

34. In re-direct examination, the witness testified that he had used a sale of a K-Mart on West 58th Avenue that had also been utilized by the Petitioner's witness.

35. The witness testified that he had not made an adjustment to the rental rates from the comparable rentals because there was no reason to make any. Each was selected precisely due to its respective comparability to the subject.

36. Respondent assigned an actual value of \$5,401,800.00 to the subject property for tax year 2002.

37. Called as a rebuttal witness, Mr. Brad Weiman testified that the Respondent's comparable sale #1 is not a relevant comparison due to the fact that it relied on Wal-Mart credit. Comparable sale #2 was in very good condition, and he felt that the adjustment applied by the Respondent's witness was inappropriate. Comparable sale #3 included two "big box" locations plus in-line space. Comparable sale #4 transacted at its indicated price based on a rental rate in excess of \$10.00 per square foot. No adjustment for the lease in place was indicated.

38. The witness testified he was unable to discuss the Respondent's rental comparables because there was no data available with respect to terms, tenant finishes, date of lease, etc. Because of this lack of data, Mr. Weiman was unable to provide any meaningful analysis. With respect to the re-constructed expenses from the K-Mart Net Profit Report, the figures presented by Mr. Berger included personal property and fees paid to tax consultants. This type of report should not be utilized to derive the taxes for purposes of reconstructing the total payments that the landlord is receiving. The actual effective tax rate was calculated by the witness at 2.8%.

39. The witness testified that replacement reserves are appropriate to include in the income statement. A landlord is responsible for wear and tear at the termination of the lease. If K-Mart chooses to renew its lease, then the landlord will likely have to replace the roof.

40. With respect to the Petitioner's comparable sale #4, the witness disputed that the Aurora Mall was a "dying" mall. Simon Properties owns the mall, and spent a large amount of money to renovate the property. A power center is also being built in the area, showing the strength of the location. With respect to the Burlington Coat Factory rental, the interior finish was of good quality, and the space is a good comparable for the subject.

41. The witness testified in response to cross-examination, that he did not know if the lease was provided to the client. He noted it was not his responsibility.

42. The witness testified that the repairs to the Aurora Mall were made in 1997/1998. Current discussions have focused on additional capital improvements to the mall. The witness noted that he had a lease on the subject, and used it to value the subject in his appraisal.

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 cost approach had little relevance in the valuation of the subject.

3. While both parties provided credible direct sales comparison information, it was the income analysis to which the Board gave the greatest credence. While the Board is concerned that the Respondent did not have access to the appropriate income data for the subject property, the data in the possession of the Petitioner's expert provided a strong basis for establishing the income generating capabilities of the subject within its market. Mr. Weiman testified that the existing lease was at market, and no testimony was provided that would invalidate that assertion. The Respondent was hampered by not having access to the income information, and thus examined other properties that helped to determine an appropriate rental rate.

4. The attempt to back into a rental rate from the data that Mr. Berger was able to obtain on the subject, while commendable in the face of a dearth of any alternative income information, is ultimately less persuasive than the actual income information relating to the lease on the subject. The Board gave the greatest weighting to the subject's actual income in this instance, given that it appears to be within the range of comparable market income data from both parties.

5. The Board concluded that the 2001 actual value of the subject property should be reduced to \$4,500,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$4,500,000.00.

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 19th day of September, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Mark R. Linné

Mark R. Linné

This decision was put on the record

SEP 18 2002

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

Penny S Bunnell
Penny S Bunnell

