

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SAFEWAY STORES 45, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Clifton D. Hypsher, Esq. Address: 3780 South Broadway Englewood, Colorado 80113 Phone Number: (303) 806-5104 Attorney Reg. No.: 20855</p>	<p>Docket Number: 41446</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 5, 2004, Diane M. DeVries and Debra A. Baumbach presiding. Petitioner was represented by Clifton D. Hypsher, Esq. Respondent was represented by Michelle B. Gombas, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**9229 Lincoln Avenue, Lone Tree, Colorado
(Douglas County Schedule No. R0407088)**

The subject property is a supermarket consisting of 55,876 square feet.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax year 2003. All three approaches to value were considered, with emphasis on the income and market approaches.

Respondent:

Respondent contends that the subject property was valued correctly. Respondent's comparable sales are within close proximity to the subject and income information was derived from published reports.

FINDINGS OF FACT:

1. Both parties considered the cost approach in their valuations. However, most weight was placed on the income and market approaches.

2. Petitioner's witness, Mr. Dan George, a Registered Appraiser with 1st Net Real Estate Services, Inc., presented the following indicators of value:

Market:	\$4,460,745.00
Cost:	\$5,154,932.00
Income:	\$4,527,182.00

3. Petitioner's witness presented five comparable sales ranging in sales price from \$1,900,000.00 to \$6,000,000.00, or from \$42.91 to \$90.13 per square foot. After adjustments were made, the sales ranged from \$54.50 to \$85.62 per square foot.

4. Mr. George testified that numerous supermarkets sold within the base period. All five of Petitioner's comparables sales are supermarkets. Sale 1, a Safeway Store located in Castle Rock, was adjusted 20% for age and 5% for size, resulting in an adjusted price per square foot of \$75.53.

5. Petitioner's Sale 2, a King Soopers Store located in Denver, was adjusted 15% for age to arrive at an adjusted price per square foot of \$80.70.

6. Petitioner's Sales 3 and 4 are Albertsons Stores located in Denver and Lafayette, respectively. Sale 3 was adjusted 5% for size, 12% for age, and 10% for inferior quality. After adjustment, the indicated price per square foot of Sale 3 was \$54.50. Sale 4 was adjusted 5% for size, 5% for land-to-building ratio, 10% for age and 10% for inferior quality. The adjusted price per square foot of Sale 4 was \$85.62.

7. Petitioner's Sale 5 is a King Soopers Store located in Highlands Ranch. This sale was adjusted 5% for superior quality, resulting in an \$85.62 adjusted price per square foot. The sale price of this property was negotiated one year prior to the sale. This property was included in Respondent's comparable sales.

8. Based on the market approach, Mr. George concluded to a value of \$79.83 per square foot for a total indicated value of \$4,460,745.00.

9. Petitioner's witness presented an income approach to derive a value of \$4,527,182.00 for the subject property.

10. Mr. George presented four comparable rental properties for comparison in the income approach. Three of the comparables are Safeway stores and one of the comparables was an Albertsons store that has been leased to Big Lots. Rent Comparable 1 is located in Boulder, Rent Comparable 2 is located in Lakewood, Rent Comparable 3 is located in Pueblo and Rent Comparable 4 is located in Denver. The rental rates range from \$5.50 to \$8.29 per square foot. The Petitioner's witness concluded to a rental rate of \$7.75 per square foot.

11. Mr. George applied a 3 percent deduction for vacancy rate, a 3 percent deduction for management and reserves for replacement, and a 9 percent capitalization rate to arrive at an indicated value of \$4,527,000.00.

12. Under cross-examination, Mr. George testified that all of his comparable sales were supermarkets and had been adjusted for all differences in physical characteristics. All of the rent comparables in the income approach are supermarkets. Rent Comparable 3 is located the furthest from the subject and is considered to be most similar to the subject based upon income.

13. Petitioner is requesting a 2003 actual value of \$4,500,000.00 for the subject property.

14. Respondent's witness, Mr. Mike Shafer, a Certified Residential Appraiser with the Douglas County Assessor's Office, presented the following indicators of value:

Market:	\$5,308,220.00
Cost:	\$6,236,195.00
Income:	\$5,257,367.00

15. Respondent's witness presented four comparable sales ranging in sales price from \$3,140,000.00 to \$6,855,000.00. Respondent's Sales 1 and 2 are King Soopers stores located in Aurora and Highlands Ranch. Sale 3 is a Garts Sporting Goods store located in Lone Tree, and Sale 4 is a PetsMart located in Arvada. Sales 1 and 4 were leased at the time of sale. Comparable Sale 2 sold outside the 18-month study period, but was confirmed to be under contract negotiations prior to end of the study period. No adjustments were made to any of Respondent's comparable sales.

16. Mr. Shafer testified that Respondent's comparable sales are the most similar to the subject in location and use, and bracket the subject's square footage. Respondent's comparable sales

range from \$90.00 to \$119.00 per square foot. The subject was correlated to \$95.00 per square foot for a total value of \$5,308,220.00.

17. In the income approach, Mr. Schafer concluded to a rental rate of \$9.00 per square foot. The rental rate was based upon typical rental rates of similar properties located within close proximity to the subject. No actual rent comparables were presented. Mr. Shafer deducted 3 percent for vacancy and collection and 3 percent for operating expenses. Based upon capitalization rates from sales and the Integra Investment Survey, Mr. Shafer utilized a 9 percent capitalization rate.

18. Based on the income approach, Respondent's witness concluded to an indicated value of \$5,257,367.00.

19. Mr. Shafer testified that the Petitioner did not make the appropriate adjustments to the comparable sales and did not consider all of the factors influencing the sales. Petitioner's Sales 1 and 4 are located outside the area and are not considered to be suitable for comparison. Petitioner's comparable sales are much older in year of construction. Sale 1 has a deed restriction regarding use and is not considered an appropriate sale. Petitioner's Sale 5 and Respondent's Sale 2 are the same property. The Petitioner made a location adjustment citing that it is superior to the subject. Mr. Shafer does not believe a location adjustment was warranted, as it is located close to the subject and shares similar influences.

20. Mr. Shafer testified that the rent comparables used in Petitioner's income approach are not considered to be the most suitable. It would be more appropriate to utilize rent comparables that are within close proximity to the subject. Petitioner's Rent Comparable 4 has a deed restriction and is not an Albertsons Store.

21. Mr. Shafer testified that the subject is in the beginning of its life cycle. Comparable sales that are much older have higher maintenance costs, which affect expense ratios and overall values.

22. Under cross-examination, Mr. Shafer testified that his comparable sales are the most appropriate sales to be considered. In his experience, the farther the comparables are from the subject, the less confidence you have in the sales and the adjustments are less supportable.

23. Respondent assigned an actual value of \$5,300,000.00 to the subject property for tax year 2003.

CONCLUSIONS

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. While both parties presented detailed cost analysis, both testified that they gave limited consideration to the value indicated by this approach. Therefore, the Board placed limited weight on the cost approach.

3. The Board placed limited weight on the income approach, as buyers of supermarket properties rarely rely on the income approach to value.

4. Buyers of supermarket properties are typically aware of the purchase prices paid for similar properties, thus the market approach is often used in the valuation of these properties. The Board was convinced that the market approach was the most applicable to value the subject property. No adjustments were made to Respondent's comparable sales. Additionally, two of Respondent's sales included the purchase of the leased fee interest. The Petitioner presented five comparable sales that were adjusted to reflect differences in physical characteristics; however, the adjustments were not adequately supported.

5. Both parties presented the sale of the King Soopers at 8673 South Quebec Street. The Board finds this sale to be the best indicator of value, as it is located within close proximity to the subject and is similar in age, size and condition. The Board was not convinced that Petitioner's location adjustment was appropriate. Therefore, the Board's determination of value for the subject property is based on the unadjusted sales price of \$90.13 per square foot.

6. Based on all of the evidence and testimony presented, the Board concluded that the 2003 actual value of the property should be reduced to \$5,036,103.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$5,036,103.00.

The Douglas County Assessor is directed to change his/her 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 9th day of February 2005.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Debra A Baumbach

Debra A. Baumbach

This decision was put on the record

FEB 09 2005

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

Penny S. Lowenthal
Penny S. Lowenthal

