

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JEMLEY PARTNERS,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 42979</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 8 and 16, 2005, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Stephen E. Oxman, Esq. Respondent was represented by Max Taylor, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1346 South Jason Street, Denver, Colorado
Denver County Schedule No. 05211-18-020-000**

The subject property consists of an 8,020 square foot industrial warehouse building constructed in 1968 of masonry construction on a 9,524 square foot site.

FINDINGS OF FACT:

1. Petitioner presented the following indicators of value:

Market:	\$364,700.00
Income:	\$377,100.00

2. Based on the market approach, Petitioner presented an indicated value of \$364,700.00 for the subject property.

3. Petitioner presented five comparable sales ranging in sales price from \$575,000.00 to \$960,000.00 and in size from 10,002 to 18,800 square feet. After adjustments were made, the sales ranged from \$37.13 to \$58.77 per square foot. Petitioner's Comparable 6 was removed from consideration as the sale occurred beyond the base period. Petitioner used \$46.00 per square foot to value the subject property. The Board gave less consideration to Petitioner's market approach, as the comparable sales were not independently verified, have varying physical characteristics for which no or incorrect adjustments were made, and only one sale was in close proximity to the subject. Additionally, Sale 1 was purchased by the tenant and Sales 3 and 5 were sale-leasebacks. The Board was not convinced that the sales were arms-length market transactions.

4. Petitioner did not present a cost approach.

5. Petitioner presented an income approach to derive a value of \$377,100.00 for the subject property. Two-thirds of the property was leased during the base period at \$3.50 per square foot triple net. Petitioner considered the subject lease rate to be less than the market rate. Petitioner presented a rent survey of five properties ranging in asking (not actual) rents from \$5.25 to \$6.50 per square foot. No adjustments were made to Petitioner's comparables, as they were considered to be very similar to the subject. Petitioner chose a \$5.50 per square foot triple net rental rate, a 5% vacancy rate, and a 10% expense rate. A capitalization rate of 10 percent was used, based on reports by CoStar and Joseph Farber & Company. The Board finds Petitioner's capitalization rate to be erroneous, as it did not include a tax rate.

6. Respondent pointed out that a 5 percent expense rate would be more appropriate for a triple net lease rate. The Board concurs.

7. The Board recalculated Petitioner's income approach using a 5 percent expense rate and 10.8 percent tax loaded capitalization rate, resulting in an indicated value of \$368,602.00. However, the Board gave less weight to this conclusion as Petitioner used asking rental rates and did not present sufficient data regarding physical characteristics and location for the Board to determine if adjustments to the comparable rental rates were necessary.

8. Petitioner is requesting a 2003 actual value of \$370,900.00 for the subject property, giving equal weight to the income and market approaches.

9. Respondent presented the following indicators of value:

Market:	\$493,100.00
Cost:	\$245,000.00
Income:	\$477,800.00

10. Based on the market approach, Respondent presented an indicated value of \$493,100.00 for the subject property.

11. Respondent presented four comparable sales ranging in sales price from \$290,000.00 to \$750,000.00 and in size from 4,350 to 10,959 square feet. After adjustments for age, office area, wall height, land-to-building ratio and location, the sales ranged from \$58.00 to \$62.62 per square foot. Comparable Sale 1 was most similar to the subject, and given the most weight. The concluded value via the market approach equates to \$61.48 per square foot.

12. Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$245,000.00. Due to the age of the improvements, no consideration was given to this approach. The Board agrees that the cost approach should not be given any consideration.

13. Respondent used the income approach to derive a value of \$477,800.00 for the subject property.

14. Respondent presented four rent comparables ranging in rates from \$6.69 to \$11.36 per square foot. After adjustments for year of construction, wall height, office area, and land to building ratio, the rental rates ranged from \$6.82 to \$9.09 per square foot. Respondent used a rental rate of \$7.79 per square foot, a 5 percent vacancy rate, 3 percent insurance expense, 5 percent maintenance and reserve expense, a 5 percent management expense, and a 10.8 percent tax loaded capitalization rate. The concluded value equates to \$59.58 per square foot value.

15. Respondent assigned an actual value of \$477,800.00 to the subject property for tax year 2003.

CONCLUSIONS OF LAW:

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

2. The Board carefully reviewed all the testimony and evidence provided and determined that the actual value of the subject property should be determined by giving most weight to the income approach, as the subject property is income producing. Respondent presented a well organized, well supported appraisal report. Respondent's rental rates, expenses, and capitalization rates appear reasonable.

ORDER:

The petition is denied.

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

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 30th day of December 2005.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E. Hart
Karen E. Hart

This decision was put on the record

DEC 29 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

