

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 46016 and
47049**

Petitioner:

**700 EAST SPEER LLC AND EL CONDOR
APARTMENTS LLC,**

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 9, 2007, Karen E. Hart and MaryKay Kelley presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by Max Taylor, Esq. Petitioner is protesting the 2005 and 2006 actual values of the subject property.

Docket Nos. 46016 and 47049 were consolidated for the purpose of this hearing.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**455 Sherman Street, Denver, Colorado
Denver County Schedule No. 05101-06-036-000**

The subject property is a five-story multi-tenant office building built on 1.43 acres in 1981. It has 123,938 square feet and a net rentable area of 117,305 square feet.

Respondent assigned a value of \$11,624,200.00 for tax year 2005 and tax year 2006. Petitioner is requesting values for each tax year 2005 and 2006 of \$8,400,000.00.

Cost Approach

Petitioner did not prepare a cost approach because the market did not support the cost of new construction. Respondent presented a cost approach indicating a value of \$11,264,500.00 but did not give it full weight due to the difficulty in estimating accrued depreciation. The Board, agreeing with both Petitioner and Respondent, places no reliance on the cost approach.

Market Approach

Petitioner presented five comparable sales within the base period ranging in sales price from \$3,800,000.00 to \$17,011,000.00 and in price per square foot from \$59.98 to \$112.79. After adjustments were made for location, age, physical characteristics, and size, the sales ranged from \$61.78 to \$100.38 per square foot. Petitioner presented an indicated value of \$75.00 per square foot or \$9,295,350.00 for the subject property.

Respondent presented four Denver County comparable sales within an extended five-year base period that ranged in sales price from \$12,250,000.00 to \$18,587,300.00 and in price per square foot from \$96.41 to \$116.36. After adjustments were made for access and visibility, the economic impact of September 11, and deferred maintenance, the sales ranged from \$99.30 to \$105.13. Respondent presented an indicated value of \$100.59 per square foot or \$11,800,000.00 for the subject property.

The Board notes the dissimilarities of several of the comparable sales: non-comparable locations, some with views and some located outside the county; high rise buildings; dissimilar building sizes; lack of size adjustments; wide adjusted sale ranges; large adjustments; and no exposure to the open market. The Board does not consider the market approach to be the best indicator of value for the subject property and does not give it any weight in the final reconciliation.

Income Approach:

Petitioner presented an indicated value of \$8,230,155.00. Respondent presented an indicated value of \$11,219,500.00.

Rental Income:

Petitioner concluded to a lease rate of \$15.00 per square foot based on five comparable leases ranging from \$11.00 to \$17.25 per square foot, and four new base period leases in the subject building ranging from \$12.50 to \$17.00 per square foot. Respondent's income approach used a lease rate of \$17.50 per square foot based on four unidentified rental property leases ranging from \$17.30 to \$19.50 per square foot. The Board is convinced that actual leases from the subject building, both new and renewals initiated during the base period, excepting the 300 square foot space, are the most reliable indicators of income and are equivalent to market rents. The Board finds a rental rate of \$15.50 is appropriate.

Parking and Miscellaneous Income:

Petitioner used the average of 2003 and 2004 parking revenues for a parking income of \$209,507.00. Respondent applied the 15% office vacancy rate to a potential gross parking income of \$65.00 per month each for 311 spaces, concluding to a net parking income of \$206,193.00. The Board is convinced that the actual potential income as presented by Respondent at \$242,580.00, with the application of a lesser vacancy rate at 7%, better represents the income stream.

Petitioner did not include any miscellaneous income in this approach. Respondent applied a market derived income of 50 cents per square foot which includes allowances for antennae rental income, high speed internet, late fees, and overages. The Board finds that the actual antennae income of \$38,880.00 was supported.

Expenses:

Petitioner applied a 10% vacancy loss based on Ross Research data in the midtown office sector. Respondent applied a 15% vacancy loss based on mass appraisal techniques. The actual loss per the subject's operating statement dated December 31, 2004 was 7.15%, on which the Board places the greatest weight, rounding to 7%.

Petitioner applied a 5% management fee; \$5.25 per square foot office expenses; a 3.25% parking expense; and 5% for operating, maintenance, and reserves. Respondent applied \$6.25 per square foot before taxes for operating expenses based on market comparables ranging from \$6.12 to \$6.73 per square foot. The Board places greater reliance on Respondent's operating expenses, which were market based.

Capitalization Rate:

Petitioner applied a capitalization rate of 10% supported by eleven base period sales with rates from 8.38% to 12.24% and an Integra Realty Resources report with Class A office and suburban/low rise offices rates from 8% to 12%. A tax load of 1.87% was added for an overall capitalization rate of 11.87%.

Respondent applied a tax-loaded capitalization rate of 11.30% based on published sources and three sales in the central business district with overall rates ranging from 10.34% to 11.30%.

The Board finds that Respondent's rate of 11.3% is supported by the subject property's good occupancy during the base period.

Recalculation of income approach:

Potential Gross Income	117,305sf @ \$15.50	\$1,818,228.00
Parking Revenue		\$ 242,580.00
Miscellaneous Income		<u>\$ 38,880.00</u>
Potential Gross Income		\$2,099,688.00
Less Vacancy Allowance	7% of annual gross	<u>\$ 146,978.00</u>
Effective Gross Income		\$1,952,710.00
Less Operating Expenses	117,305sf @ \$6.25	<u>\$ 733,156.00</u>
Annual Net Income		\$1,219,554.00
Overall Capitalization Rate Including Tax Load		<u>11.3%</u>
Capitalized Value of Property		\$10,792,513.00

The Board finds that the income approach provides the most reliable indication of value for the subject property.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2005 and 2006 valuations of the subject property were incorrect.

ORDER:

Respondent is ordered to reduce the 2005 and 2006 actual values of the subject property to \$10,792,513.00.

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

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Colorado Revised Statutes (“CRS”) section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the

total valuation of the Respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 10th day of November 2007.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

NOV 09 2007

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

Heather Heinlein
Heather Heinlein

