

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 50152 &
50763**

Petitioner:

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

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 20, 2010, Sondra W. Mercier and Debra A. Baumbach presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Max Taylor, Esq. Petitioner is protesting the 2007 and 2008 actual value of the subject property.

The Board consolidated Docket Nos. 50152 and 50763.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**455 Sherman Street, Denver, Colorado
(Denver County Schedule Number 05101-06-036-000)**

The subject property is a five-story multi-tenant office building completed in 1981. The building has a gross square footage of 123,938 with a net rentable area of 117,305 and is situated on 1.43-acre site. The construction is concrete slab at grade, steel frame, brick and concrete exterior walls, and the roof is flat and built up with insulation. There is a covered parking garage consisting of 311 parking spaces.

Petitioner presented the following indicators of value:

Cost:	Not used
Market:	\$10,674,755.00
Income:	\$10,521,722.00

Petitioner presented an indicated value of \$10,550,000.00 for the subject property, based primarily on the income approach with secondary emphasis given to the market approach. Petitioner's witness, Mr. Todd J. Stevens, did not present the cost approach to value.

Petitioner's witness presented a market approach to value including four comparable sales ranging in price from \$3,295,000.00 to \$22,050,000.00 and in size from 35,444 to 173,155 square feet. On a per square foot basis, the sale prices ranged from \$83.61 to \$127.34. Adjustments were made to the sales for location, age of the improvements, economic characteristics, physical characteristics, and size. Petitioner's witness testified that most of the percentage adjustments were based on his judgment rather than support from quantitative analysis. After adjustments were made for the differences, the indicated prices ranged from \$86.80 to \$94.39 per square foot and Petitioner concluded to \$91.00 per square foot for an indicated value of \$10,674,755.00.

Petitioner presented an income approach to derive an indication of value of \$10,521,722.00 for the subject. Petitioner relied on seven market leases including two executed within the subject property. The subject also had eight lease renewals during the base period. However, only seven were considered as one lease was that of the owner and not considered to be arm's-length. The unadjusted lease rates ranged from \$8.60 per square foot to \$17.50 per square foot on a full-service basis. Petitioner relied on a lease rate of \$16.00 per square foot on a full-service basis. In addition there was parking income of \$239,839.00 based on 2005 and 2006 actual income and estimated revenue from the antenna of \$41,472.00.

Petitioner made deductions of 10% for vacancy, 3.25% expense factor for the parking garage, 10% for operating, maintenance and reserves, and 5% management fee resulting in a net annual income of \$1,037,082.00. The net operating income was capitalized at a rate of 9.86%, including a base rate of 8.00% plus a 1.86% tax factor, for an indicated value of \$10,521,722.00.

Petitioner is requesting an actual value of \$10,550,000.00 for tax years 2007 and 2008 for the subject property.

Respondent presented the following indicators of value:

Cost:	\$14,169,700.00
Market:	\$14,076,600.00
Income:	\$14,791,600.00

Respondent's witness, Mr. Nathan Mondrus a Certified General Appraiser with the Denver County Assessor's office, presented an indicated value of \$14,500,000.00 for the subject giving consideration to all three approaches to value.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$14,169,700.00. There was minimal weight placed on this methodology as the degree of required adjustments for depreciation on a building of this age and condition make the indicated value less reliable. Additionally, potential investors would rely on potential income streams as a more suitable indication of value.

Respondent presented a market approach with four comparable sales that occurred during the extended base period. The sales ranged in sales price from \$6,210,000.00 to \$22,700,000.00 and size from 52,145 to 135,473 square feet of above grade net rentable area. Respondent's witness considered qualitative rather than quantitative adjustments for each sale and did not conclude to adjusted sale prices for the comparables. Respondent's witness concluded that two of the comparable sales are similar to the subject and two are superior. Using this approach, Respondent's witness concluded to a market value of \$120.00 per rentable square foot. Respondent concluded to a rounded value by the market approach of \$14,076,600.00.

Respondent presented an income approach for an indicated value of \$14,791,600.00. Respondent concluded to a rental rate of \$17.50 per square foot, based on comparable market rents providing a rental range of \$16.00 to \$18.24 per square foot. Respondent included additional income of \$261,240.00 for parking revenue, or \$70.00 per parking space, and \$87,980.00 in miscellaneous income attributed to escalation income, utilities, and CAM reimbursements. Respondent deducted vacancy of 10% and expenses of 35% to conclude to a net operating income of \$1,405,200.00. The net operating income was capitalized at a rate of 9.5%, including a stabilized rate of 7.50% plus a tax load of 2.00%, for an indicated value of \$14,791,600.00.

Respondent assigned an actual value of \$13,024,200.00 to the subject property for tax years 2007 and 2008.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2007 and 2008 valuation of the subject property was incorrect.

The Board concludes the income approach is the most appropriate method to value the subject property. Potential investors will consider the income stream a more reliable indicator in determining the value of the subject property. The Board agrees that minimal weight should be placed on the cost approach as determining appropriate depreciation for the subject property produces a less reliable indication of value.

The Board finds that Petitioner's use of \$16.00 per square foot for full-service rent to be well supported in the market and additionally supported by the two leases from the subject property executed during the base period. The parking revenue was derived from actual income, however Petitioner admitted to an error in deducting a vacancy allowance on the actual parking income.

Although the subject's actual income was considered by Respondent in their income analysis, the Board believes the income and parking revenue utilized was overstated using above market rental rates and the inclusion of reimbursement and rent escalation included as other income. The Board places less reliance on lease information utilized by Respondent because there was no information provided as to the lease terms, rental rates, and whether any were executed within the

base period. The Board understands the requirement for confidentiality within the Assessor's office with regard to specific information concerning income and lease information. However, the Board believes a higher degree of specific information regarding lease rates, lease terms, and basic physical characteristics regarding the property is necessary for the Board to give weight to the information provided. The Board believes that the lease rate, vacancy rate, and overall rate applied should reflect market conditions during the base period.

The Board concludes to a stabilized rental rate of \$16.00 per square foot with a net rentable area of 117,305 square feet, parking income at \$70.00 per space for 311 spaces, and antenna income of \$41,472.00. The Board concludes 10% vacancy and 40% expenses are reasonable. Petitioner's 9.86% capitalization rate, which was supported by market sales, is applied for an indicated value of \$11,936,914.00.

The Board concludes that the 2007 and 2008 actual value of the subject property be reduced to \$11,940,000.00.

ORDER:

Respondent is ordered to reduce the 2007 and 2008 actual value of the subject property to \$11,940,000.00.

The Denver County Assessor is directed to change his/her 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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 7th day of May 2010.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier
Sondra W. Mercier

Debra A. Baumbach
Debra A. Baumbach

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

Heather Flannery
Heather Flannery

