

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CHARLES M. COOK,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 54654</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 10, 2011, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Thomas S. Keyes, Agent. Respondent was represented by Max Taylor, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**4100 Tennyson Street, Denver, Colorado
Denver County Schedule No. 02194-12-011-000**

The subject is a multi-tenant retail building containing 5,785 square feet of gross building area configured for use by five tenants. The building was constructed in 1949 and is situated on a B4 zoned lot containing 6,463 square feet.

Petitioner is requesting an actual value of \$700,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$816,300.00 for the subject property for tax year 2009.

Petitioner presented the following indicators of value:

Market:	\$838,825.00-\$977,665.00
Cost:	N/A
Income:	\$350,300.00

Petitioner presented three comparable sales ranging in sale price from \$325,000.00 to \$640,000.00 and in size from 1,534 to 3,290 square feet. After adjustments were made, the sales ranged from \$838,825.00 to \$977,665.00.

Petitioner applied a negative time adjustment to all three of the sales stating that the market had declined by approximately 20% during the valuation period and the comparable sales considered were all from the beginning to the mid-point of the trend period.

Petitioner presented information from two additional comparables and the sale of the subject property but this data was from outside the valuation period.

Petitioner presented an income approach to derive a value of \$350,300.00 for the subject property.

Petitioner relied upon the actual income and expenses provided by the building owner and the owner's landlord for 2007 and 2008. Petitioner derived an average net operating income from these two years. No deduction was taken for maintenance expense, as Petitioner stated these categories were unusually high during the time period because of extraordinary costs for replacements.

Petitioner presented partial lease information between the owner and The Denver Bread Company established in 2002 and 2004 for the units located at 4100 and 4110 Tennyson Street. Both leases reference an option to purchase granted to Greg Bortz, President of The Denver Bread Company.

On January 1, 2008, Greg Bortz, acting as the landlord for the owner, leased 4110 Tennyson Street to a third party. In January, Mr. Bortz provided a summary to the owner indicating total rents for the building of \$2,758.00 per month with escalations to occur in 2009, which could be up to \$3,385.00 per month.

Respondent's witness, Mr. Donald P. Delmendo, a Certified General Appraiser, presented the following indicators of value:

Market:	\$892,000.00
Cost:	\$681,200.00
Income:	\$885,100.00

Respondent presented three comparable sales and used the same sales presented by Petitioner. After adjustments were made, the sales ranged from \$154.20 to \$169.48 per square foot of above grade building area.

Respondent adjusted the unit value of Comparable Sale 1 and Comparable Sale 2 downward by 15% due to size differences. Comparable Sale 3, the smallest building, was adjusted downward by 20% to obtain the above indications. Respondent's value, by use of the market approach, is \$154.20 per square foot or \$892,000.00.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$681,200.00.

Respondent presented four comparable land sales ranging in price from \$39.39 to \$126.98 per square foot. The comparables ranged from 3,150 to 18,750 square feet in size and were zoned B2, B3, or B4. No adjustments were applied to the land comparables, and Respondent relied upon the mass appraisal unit value of \$40.00/SF, which produced a value of \$258,500.00 for the subject property's 6,463 square feet of land area. Respondent then added a replacement cost new less depreciation of \$422,740.00, determined via a cost service, to produce an opinion of value, by the cost approach, totaling \$681,200.00, rounded.

Respondent used the income approach to derive a value of \$885,100.00 for the subject property. Respondent provided three comparable rentals obtained from the Assessor's records. The comparables ranged from 880 square feet to 2,751 square feet and indicated rents from \$17.99 to \$32.73 per square foot of area.

Respondent also presented three comparable rentals researched in the local market. The comparables ranged from 2,600 to 5,500 square feet and indicated rents from \$10.32 to \$20.40 per square foot of area.

Respondent adopted a rent rate of \$18.00 per square foot for the subject. Respondent applied a vacancy factor of 10% and expenses at 15% of Effective Gross Income, to obtain a net operating income of \$79,659.00. The net operating income was capitalized by 9%, the same rate used by Petitioner. Application of the above rate to the net operating income produced an opinion of \$885,100.00 via the income approach.

Respondent assigned an actual value of \$885,100.00 to the subject property for tax year 2009. Respondent noted the site specific valuation was greater than the value assigned to the property through the mass appraisal process of \$816,300.00.

Respondent presented sufficient probative evidence and testimony to show that the assigned value for the subject property was correct for tax year 2009.

The Board was not persuaded by Petitioner's use of the actual income of the subject property to determine value. The testimony suggests the actual income was not realistic, as it was significantly below the amounts being obtained by similar structures in the same market area. The management of the building was suspicious as the owner's representative also had an option to purchase the property and an incentive to keep the income at a lower level to justify his intended purchase.

The Board was also not persuaded by Petitioner's use of an across the board reduction in the unit values of the comparable sales by 20% without sufficient support for such declines in this location. The vast discrepancy between the indications of the two approaches, ranging from nearly \$500,000.00 to over \$625,000.00, calls into question the reliability of the analysis.

The Board was not convinced by Respondent's market and income approach value estimates. In the Respondent's market approach, the comparable sales used were very similar in location but ranged from over 40% to nearly 75% smaller in size. Without sufficient support from the market, the comparables had to be adjusted downward from 15% to 20% to arrive at the value obtained.

The Board was also not satisfied with the Respondents estimate of market income. The two comparable rentals most similar to the subject in size indicated rentals from \$10.32 to \$15.00 per square foot. Application of a \$15.00/SF rental rate, with the same expenses, produces a value indication of \$737,588.00.

In the absence of a bracketed size adjustment to the comparable sales, the Board would consider the appropriate value to be somewhere in between the adjusted indication of the income approach of \$737,588.00 and the market approach of \$892,000.00. With equal weight to both approaches, the indication would be \$814,844.00, very similar to the value assigned to the subject of \$816,300.00.

ORDER:

The petition is denied.

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).

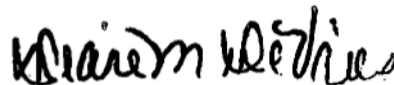
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

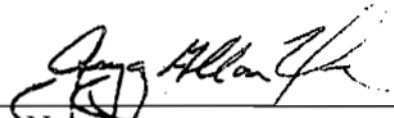
Section 39-8-108(2), C.R.S.

DATED and MAILED this 10 day of June 2011.

BOARD OF ASSESSMENT APPEALS

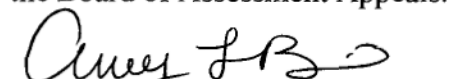


Diane M. DeVries



Gregg Near

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



Amy Bruins