

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

**Consolidated Docket
Nos.: 59642, 59643,
59644**

Petitioner:

KOHL'S DEPARTMENT STORES, INC.

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 3, 2013 Diane M. DeVries, James R. Meurer and Gregg Near presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2011 actual value of the subject property.

The testimony for Docket No. 59642 has been incorporated into Docket Nos. 59643 and 59644 for purposes of this hearing.

The subject properties are described as follows:

**11485 Twenty Mile Road, Parker, CO
Douglas County Parcel No. R0440894**

**4800 Milestone Lane, Castle Rock, CO
Douglas County Parcel No. R0448312**

**8660 S Quebec Street, Lone Tree, CO
Douglas County Parcel Nos. R0415779 and R0415780**

The subject properties consist of three nearly identical Kohl's Department Stores. The following summarizes the individual property features:

| Address | Year Built | Building Size | Lot Size |
|-----------------|-------------------|----------------------|-----------------|
| 20 Mile Road | 2003 | 88,003 Sq. Ft. | 361,156 Sq. Ft. |
| Milestone Lane | 2004 | 88,043 Sq. Ft. | 393,957 Sq. Ft. |
| S Quebec Street | 1999 | 89,639 Sq. Ft. | 361,156 Sq. Ft. |

Each of the buildings is finished as a department store. The buildings are concrete block construction with distinct entrances and warehouse/loading dock areas. Interior finish is a combination of resilient and carpet floor covers, limited partitions, drop ceilings with light panels and overhead HVAC systems. The buildings are reported to be in overall average condition for their respective ages.

Petitioner is requesting the following values for tax year 2011:

| | |
|------------------|-------------|
| 20 Mile Road: | \$5,896,200 |
| Milestone Lane: | \$6,163,000 |
| S Quebec Street: | \$6,005,800 |

Petitioner's witness Steve Letman, a Certified General Appraiser, presented the following indicators of value:

20 Mile Road

| | |
|---------|-------------|
| Cost: | \$6,948,700 |
| Market | \$5,720,200 |
| Income: | \$6,043,200 |

Milestone Lane

| | |
|---------|-------------|
| Cost: | \$7,281,300 |
| Market | \$5,722,800 |
| Income: | \$6,045,900 |

S Quebec Street

| | |
|---------|-------------|
| Cost: | \$5,826,500 |
| Market | \$5,826,500 |
| Income: | \$6,155,500 |

Mr. Letman provided a cost approach including five comparable land sales concluding to an average value of \$6.24 per square foot. From this information he determined the assessor's land value to have been reasonable for the Twenty Mile Road and Milestone Lane properties. The assessor's land value for Quebec Street was described as "somewhat high" and he adopted a value of \$7.00 per square foot for this site. Using costs from the Marshall-Swift Manual Mr. Letman concluded to a cost new for each building of \$75.00 per square foot. Using an analysis of comparable properties Mr. Letman determined the economic life of a similar structure to be 30 years and he then applied depreciation at 3.3% per year. The following summarizes his calculations:

| Address | Cost New | Depreciation | Adj. Cost | Land Value | Value Estimate |
|---------------|-------------|--------------|-------------|-------------|----------------|
| 20 Mile Rd. | \$6,600,200 | 44% | \$4,400,100 | \$2,548,600 | \$6,948,700 |
| Milestone Ln. | \$6,603,200 | 30% | \$4,622,200 | \$2,659,100 | \$7,281,300 |
| S Quebec St. | \$6,772,900 | 50% | \$3,361,400 | \$2,528,100 | \$5,889,500 |

Mr. Letman presented a market (sales comparison) approach that included five comparable sales ranging in sales price from \$1,600,000 to \$7,500,000 and in size from 50,590 square feet to 109,695 square feet. Sale 1 was found to be a land transaction after publication of the report and it was removed from consideration at the hearing. After adjustments were made, the sales ranged from \$22.66 to \$63.93 on a per square foot basis. The major adjustments to the comparable sales consisted of market conditions (time), site size, age and building size. Mr. Letman reconciled the adjusted sales at \$65.00 per square foot resulting in an indicated value for the three properties as follows:

| | |
|-----------------|-------------|
| 20 Mile Road | \$5,720,200 |
| Milestone Lane | \$5,722,800 |
| S Quebec Street | \$5,826,500 |

Petitioner's witness also presented an income approach. A direct capitalization model was used consisting of income estimated at \$7.00 per square foot on a triple net basis. A long term vacancy and collection factor was estimated at 5% and expenses including management fees, reserves for replacement and leasing commissions were estimated at 7%. When the above expenses were reduced the net operating income rate was determined to be \$6.18 per square foot. The net rate was then capitalized at a 9% overall rate producing a \$68.67 unit value per square foot of building area. The following summarizes the conclusions of his income approach:

| Address | Square Feet | \$/SF | Value Estimate |
|---------------|-------------|---------|----------------|
| 20 Mile Rd. | 88,003 | \$68.67 | \$6,043,200 |
| Milestone Ln. | 88,043 | \$68.67 | \$6,045,900 |
| S Quebec St. | 89,639 | \$68.67 | \$6,155,500 |

In his reconciliation Mr. Letman relied primarily upon the market and income approaches with support from the cost approach.

Respondent assigned the following values for tax year 2011:

| | |
|------------------|-------------|
| 20 Mile Road: | \$7,895,833 |
| Milestone Lane: | \$7,899,422 |
| S Quebec Street: | \$8,042,611 |

Respondent's witness Michael J. Fronczak, a Certified General Appraiser, presented the following indicators of value:

20 Mile Road

Market \$7,900,000
Income: \$7,900,000

Milestone Lane

Market \$7,900,000
Income: \$7,900,000

S Quebec Street

Market \$8,070,000
Income: \$8,040,000

Respondent's witness presented a market approach that included four comparable sales ranging in sales price from \$3,920,000 to \$11,846,000 and in size from 57,444 square feet to 109,562 square feet. The major adjustments to the comparable sales were for building quality, age/condition, access/visibility and location. Mr. Fronczak reconciled the adjusted sales at \$90.00 per square foot resulting in an indicated value for the three properties as follows:

20 Mile Road \$7,900,000
Milestone Lane \$7,900,000
S Quebec Street \$8,070,000

Mr. Fronczak also presented an income approach. A direct capitalization model was used consisting of income estimated at \$10.00 per square foot on a triple net basis. A long term vacancy and collection factor was estimated at 15% and expenses including management fees, and reserves for replacement were estimated at 5%. After the above expenses were reduced the net operating income was then capitalized at a 9% overall rate. The following summarizes the income approach for each property:

| Address | Square Feet | Net Income | OAR | Value Estimate (Rounded) |
|---------------|-------------|------------|-----|--------------------------|
| 20 Mile Rd. | 88,003 | \$710,624 | 9% | \$7,900,000 |
| Milestone Ln. | 88,043 | \$710,947 | 9% | \$7,900,000 |
| S Quebec St. | 89,639 | \$723,835 | 9% | \$8,040,000 |

Petitioner's witness gave slightly more weight to the market approach in the final reconciliation resulting in a final value estimate for the three properties as follows:

20 Mile Road \$7,900,000
Milestone Lane \$7,900,000
S Quebec Street \$8,040,000

Petitioner contends Respondent's comparable sales are either supportive of a lower value or are not appropriate. Petitioner's witness Richard Hermes, an accountant and consultant,

testified that Respondent's Sale 3 was actually the purchase of a long term ground lease and Sale 4 involved a lease with a total of 60 years in options. Mr. Hermes also stated the additional comparables cited by Respondent's appraiser were actually allocated prices in a portfolio transaction of 30 sales. Petitioner also contends the qualitative adjustments, as applied by Respondent's witness, were inconclusive. Petitioner further argued that the income data used by Respondent was confidential thus leaving them unable to review and refute the information.

Respondent argues Petitioner's comparable sales were inadequate. Sale 2 is lender owned, Sale 3 is a much older building and Sale 5 is both a dated transaction as well as only in shell condition. According to Respondent, Petitioner's appraiser applied inconsistent adjustments for market conditions. Regarding the income approach, Respondent argues that Petitioner's appraiser did not rely upon actual leases but provided only listings of buildings and did not provide complete information, such as the ages of the properties, that would determine comparability.

The significant differences between Petitioner's and Respondent's estimates of value were the comparables used, the adjustments to the comparables in the market approach and the estimate of the appropriate market rent and expenses in the income approach

The Board was not compelled by the testimony of either party. Petitioner's witness provided only two comparable sales from similar locations. The witness provided no actual leases and relied upon asking rates of only marginally similar properties from locations outside of Douglas County. Respondent also provided only two reasonably similar comparable sales and, due to confidentiality, provided insufficient information to assess the comparability of the leased properties.

The Board has reviewed the comparable sales and the information provided in both the reports and testimony. A unit value of \$68.00 per square foot of building area is appropriate for the market approach. Based on this unit value the indication for each of the three properties is outlined as follows:

| Address | Square Feet | Unit Value | Value Opinion | Rounded |
|----------------|--------------------|-------------------|----------------------|----------------|
| 20 Mile Rd. | 88,003 | \$68.00 | \$5,984,204 | \$6,000,000 |
| Milestone Ln. | 88,043 | \$68.00 | \$5,986,924 | \$6,000,000 |
| S Quebec St. | 89,639 | \$68.00 | \$6,095,452 | \$6,100,000 |

Regarding the income approach, after review of the variables found in both the exhibits and testimony used by both Petitioner and Respondent, the Board concludes that a \$9.00 NNN rental rate, 10% vacancy factor, 7.5% expense factor and a 9% overall rate most accurately reflect the economic characteristics of the subject building. These variables are reflected in the direct capitalization model found below:

| Income Approach: Twenty Mile Rd. | | |
|---|-----------------|-------------|
| Gross Income | 88,003 @ \$9.00 | \$792,097 |
| Vacancy | 10% | (\$79,210) |
| Effective Gross Income: | | \$712,887 |
| Expenses | 7.5% of EGI | (\$53,467) |
| Net Operating Income: | | \$659,421 |
| Overall Rate: | | 9.00% |
| Value Indication | | \$7,326,897 |
| Rounded: | | \$7,300,000 |

| Income Approach: Milestone Ln. | | |
|---------------------------------------|-----------------|-------------|
| Gross Income | 88,043 @ \$9.00 | \$792,387 |
| Vacancy | 10% | (\$79,239) |
| Effective Gross Income: | | \$712,148 |
| Expenses | 7.5% of EGI | (\$53,486) |
| Net Operating Income: | | \$658,662 |
| Overall Rate: | | 9.00% |
| Value Indication: | | \$7,318,465 |
| Rounded: | | \$7,300,000 |

| Income Approach: S Quebec St. | | |
|--------------------------------------|-----------------|-------------|
| Gross Income | 89,639 @ \$9.00 | \$806,751 |
| Vacancy | 10% | (\$80,675) |
| Effective Gross Income: | | \$726,076 |
| Expenses | 7.5% of EGI | (\$54,456) |
| Net Operating Income: | | \$671,620 |
| Overall Rate: | | 9.00% |
| Value Indication: | | \$7,462,448 |
| Rounded: | | \$7,500,000 |

With the quality of information provided the Board has placed equal weight on both approaches to value. The following summarizes the adjusted indications based upon the information considered by the Board:

| Address | Market Approach | Income Approach | Value Opinion |
|----------------|------------------------|------------------------|----------------------|
| 20 Mile Rd. | \$6,000,000 | \$7,300,000 | \$6,650,000 |
| Milestone Ln. | \$6,000,000 | \$7,300,000 | \$6,650,000 |
| S Quebec St. | \$6,100,000 | \$7,500,000 | \$6,800,000 |

ORDER:

Respondent is ordered to reduce the 2011 actual value of the subject properties as stated above.

The Douglas 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 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 14th day of January, 2013.



BOARD OF ASSESSMENT APPEALS

Diane M. Devries

James R. Meurer

Gregg Near

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

Milla Crichton