

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 60778

Petitioner:

LSI RETAIL II LLC,

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 21, 2013 Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Sharlene J. Aitken, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

**8351 N. Rampart Range Road, Littleton, CO
Douglas County Account No. R0460306**

The property consists of a single story retail building located in the Safeway anchored Roxborough Marketplace retail center in the north portion of Douglas County. The free standing building contains 14,168 net rentable square feet. The building is masonry construction, was built in 2005, and is reported to be in overall good condition. Land area is approximately 1.83 acres and zoning is PD (Planned Development) through Littleton. As of the date of value, the center was 37% vacant.

Respondent assigned a value of \$2,213,600 for tax year 2012. Petitioner is requesting a value of \$1,138,000 for tax year 2012.

Petitioner presented the following indicators of value:

Cost:	\$1,331,000
Market	\$1,235,000
Income:	\$1,138,000

Relying primarily on the income approach, Petitioner concluded to an indicated value of \$1,138,000 for the subject property.

Petitioner's witness, Mr. Mike Shafer, with Property Tax Refund Consultants, LLC, presented a cost approach reflecting the replacement cost of the subject's retail space and commercial canopies of \$1,104,596, and the cost of the remaining site improvements of \$215,964, resulting in a total replacement cost new of the subject improvements of \$1,320,560. After applying 23.33% in overall depreciation, Petitioner's witness concluded to the cost of the subject's improvements of \$1,012,430. The witness then added \$318,859 for the land value, calculated at \$4.00 per square foot, arriving to the subject's value of \$1,331,289 via the cost approach.

Mr. Shafer also presented a market (sales comparison) approach that included three comparable sales ranging in sales price from \$950,000 to \$1,875,000 and in size from 8,969 square feet to 22,853 square feet. After adjustments were made, the sales ranged from \$77.00 to \$89.00 on a per square foot basis. The major adjustments to the comparable sales consisted of date of sale and age. Petitioner's witness reconciled the adjusted sales at \$86.00 per square foot resulting in an indicated value of \$1,235,000 for the subject via the market approach.

Petitioner's witness also presented an income approach to derive a value of \$1,138,000 for the subject property. A direct capitalization model was used and consisted of income based on a \$13.25 per square foot full triple net (NNN) rental rate. A long term vacancy and collection rate was estimated at 28% and non-reimbursable expenses were estimated at 15% of effective gross income or \$20,090. The net operating income of \$113,842 was then capitalized at a 10.00% overall rate resulting in the indicated value of \$1,138,000, rounded, via the income approach. Petitioner's witness indicated that the income approach received the greatest amount of consideration in determining the subject's final conclusion of value.

Petitioner's witness testified that the sales in Respondent's market approach were not truly comparable to the subject due primarily to location. Petitioner further argued that the market rental rate derived by Respondent's lease comparables was suspect, and that Respondent used a low capitalization rate within the income approach that was not supportable for the subject property.

Petitioner's witness also provided an equalization argument comparing the subject building to other buildings in the center. The courts and the Board have concluded that the Board may hear an equalization argument; however only as support of the subject property's value, rather than as means of establishing value.

Respondent presented the following indicators of value:

Cost:	N/A
Market	\$2,280,000
Income	\$2,270,000

Respondent concluded to an indicated value of \$2,270,000; however, is supporting the Board of Equalization assigned value of \$2,213,600.

Respondent's witness, Mr. Michael J. Fronczak, MAI, a Certified General Appraiser with the Douglas County Assessor's Office, presented a market approach that included four comparable sales ranging in sales price from \$1,841,175 to \$9,500,000 and in size from 9,919 square feet to 50,388 square feet. The major adjustments to the comparable sales were for location, access/visibility, building square footage, age, quality, and utility. Respondent reconciled the adjusted sales at \$180.00 per square foot resulting in an indicated value of \$2,280,000 via the market approach after adjustment for excess vacancy. Respondent's witness testified that the market approach was given secondary weight in concluding to his final opinion of value.

In addition, Respondent's witness presented an income approach. A direct capitalization model was used and consisted of income based on a \$20.00 per square foot full triple net (NNN) rental rate. A long term vacancy and collection rate was estimated at 15% and non-reimbursable expenses were estimated at \$12,043. The net operating income of \$228,813 was then capitalized at a 9.00% overall rate resulting in an indicated stabilized value of \$2,542,369. An adjustment for excess vacancy in the amount of \$270,000 was then deducted from the stabilized value resulting in an "as is" value of \$2,270,000 rounded. The witness indicated that the income approach received the greatest amount of consideration in arriving to the subject's final conclusion of value.

Respondent's witness testified that his estimated triple net lease rate accurately reflected market rent for the subject. Respondent's witness further testified that Mr. Shafer used market data that was not reflective of the subject building.

The significant differences between Petitioner's and Respondent's conclusions of final value were found in the estimate of market rent (\$20.00 v. \$13.25) and in the estimate of vacancy and collection loss (15% v. 28%), the overall rate (9.00% v. 10.0%) used in the direct capitalization model, and the use of an adjustment for excess vacancy.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005).

After careful consideration of the testimony and exhibits presented in the hearing, the Board concurs with the parties that the income approach should be given the most weight relative to the final opinion of value. After review of the variables found in both the exhibits and testimony used by both Petitioner and Respondent, the Board concludes that the variables used in Respondent's income approach are most supportable, with the exception of the market rental rate. The Board concludes, based on the data and testimony, that \$18.00 NNN rental rate is more indicative of the market for this type of space. As noted, other than the market rental rate, the Board finds that the remaining variables used in Respondent's model, including the 9.0% overall rate, are most persuasive, and that the adjustment for excess vacancy is appropriate. These variables are reflected in the direct capitalization model that follows:

Gross Income				
	Rentable Space	14,168	sf @ \$18.00	\$255,024
Total Gross Income		14,168		\$255,024
Vacancy Factor		15.00%		\$38,254
Effective Gross Income				\$216,770
Expenses NNN			@ 5.00%	\$10,839
Net Operating Income				\$205,932
Overall Rate				9.00%
Stabilized Value				\$2,288,132
Less Excess Vacancy Adjustment				\$270,000
Indicated As Is Value				\$2,018,132
	round			\$2,020,000
	per square foot			\$142.44

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to \$2,020,000.

The Douglas County Assessor is directed to change 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 5th day of March, 2013.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

James R. Meurer

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

Milla Crichton

Milla Crichton

