BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **WFC YCS LLC,** v. Respondent: **ARAPAHOE COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 63447**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 12, 2014, MaryKay Kelley and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

6570 S Yosemite Street
Greenwood Village, Colorado 80111
Arapahoe County Schedule No. 2075-21-4-24-001

The subject is a strip retail center containing 24,094 square feet of gross building area and 23,847 rentable square feet. The building was constructed in 1977 for use as a Skate City Roller Rink. It was converted to the current use in 1995. As currently configured, the building contains six units ranging from 2,049 square feet to 5,760 square feet. Total site area is 1.79 acres.

Petitioner presented the following indicators of value:

Market:	$2,742,405
Cost:	Not applied
Income:	$2,747,312

Petitioner is requesting an actual value of $2,750,000 for the subject property for tax year 2013.

Petitioner's agent Mr. Todd Stevens, a real estate broker, presented a market approach containing five comparable sales ranging in sale price from $1,400,000 to $7,450,000 and in size from 10,360 to 49,912 square feet. After adjustments were made, the sales ranged from $73.86 to $133.45 per square foot of building area.

Mr. Stevens presented two sales from Douglas County, two from Arvada in Jefferson County and a sale from Broomfield. Both sales from Douglas County were under distress (REO). Sales 1 and 4 were adjusted upward as inferior locations; sale 2 was adjusted downward as a better location. Mr. Stevens adjusted all the sales downward based on the subject's 1977 construction date. All of the sales were adjusted for "economic characteristics" based on the current economic conditions. Sale 2 had superior "economic characteristics" and was adjusted downward and all the remaining sales were adjusted upward. Sale 1 was adjusted downward for superior "physical characteristics" that included an unfinished foundation on a portion of the site. All sales were adjusted downward for excess land based upon the subject's land to building ratio. After all adjustments were applied, Mr. Stevens concluded to a unit value of $115.00 per square foot of building area and a value opinion by the market approach of $2,742,405.

Petitioner's witness presented an income approach to derive a value of $2,747,312 for the subject property. Mr. Stevens separated the income streams anticipated for restaurant space and for in-line retail space. Mr. Stevens then presented two sets of income comparables. Restaurant leases from two different locations were identified ranging from $11.90 to $24.00 per square foot on a "triple net" basis. These were compared to a recent lease in the subject building at $21.00 per square foot. A NNN restaurant rate of $21.00 per square foot was adopted.

Four in-line retail leases were presented. The spaces ranged from 967 to 8,025 square feet with one comparable identified as "various". NNN rates from $12.00 to $18.00 per square foot were identified. These were compared to a recent lease in the subject building at $14.00 per square foot. A NNN in-line rate of $14.00 per square foot was adopted.

After determination of the anticipated revenue a vacancy allowance of 20% was deducted. The collected revenue was then further adjusted downward 5% for management and an additional 20% for "operating, maintenance and reserves". Mr. Stevens then applied a capitalization rate derived from a local publication and concluded to a value opinion by the income approach of $2,747,312.

Mr. Stevens gave weight to both approaches and indicated the income data gave the best estimate. The reconciled conclusion of market value was $2,750,000.

Respondent presented the following indicators of value:

Market:	$5,540,000
Cost:	Not applied

Income: $4,900,000

Respondent assigned a value of $4,900,000 for the subject property.

Respondent's witness Mr. Gary Mycock, a Certified General Appraiser, presented a market approach consisting of four comparable sales ranging in sale price from $3,525,000 to $11,400,000 and in size from 19,000 to 34,749 square feet. After adjustments were made, the sales ranged from $167.68 to $274.24 per square foot of building area.

Mr. Mycock presented three sales from Douglas County and a sale from Denver. Sale 3 was identified as occurring under distressed conditions and was adjusted upward 20%. Mr. Mycock adjusted sales 1, 2 and 3 downward 20% based on the subject's 1977 construction date. Sale 4, constructed in 1956, was adjusted upward. Under the category of renovations the sales were considered equal except for sale 4 and it was adjusted upward. The witness used a standard of 4 to 5 parking spaces per 1,000 square feet of building area resulting in the subject and sales 1, 2 and 3 being considered equal. Sale 4, at a ratio of 2.21/1000 was adjusted upward. Mr. Mycock considered the subject to be 80% occupied. Sales 1, 2 and 4 had vacancy from 0% to 6% and were adjusted downward. Sale 3, 45% vacant, was adjusted upward. After all adjustments were applied Mr. Mycock concluded to a unit value of $230.00 per square foot of building area and a value opinion by the market approach of $5,540,000 (rounded).

Respondent's witness presented an income approach to derive a value of $4,900,000 for the subject property. Mr. Mycock determined the income stream anticipated for the subject to be "in-line store", regardless of interior finish. Mr. Mycock first considered the subject's actual income, including vacant space in process of finish for a tenant, to determine an actual net rent of $18.61 per square foot with a vacancy of 8.6%. Market rentals from five different centers were presented and adjusted to the subject resulting in a reconciled rate of $21.50 per square foot on a net basis. Mr. Mycock concluded to a net market rental of $21.50 per square foot.

After determination of the anticipated revenue, Mr. Mycock approached the analysis from two different directions; one based on actual income and expenses and a second analysis based on market evidence. Vacancy allowances of 9% and 10% were applied. For the market based approach, an additional reduction of 5% of collected income for owner's expenses was taken. Mr. Mycock then applied a capitalization rate of 7.75% based on transactions, the band of investment and survey data derived from a local publication. The two approaches produced values from $4,700,000 to $4,900,000. Mr. Mycock concluded to a value opinion by the income approach of $4,900,000.

Mr. Mycock reconciled to a value conclusion of $5,100,000 but is recommending a value reduction to the CBOE value of $4,900,000.

Petitioner contends Respondent failed to consider the subject's high vacancy levels and paid insufficient attention to leases consummated during the base period. Petitioner further contends Respondent has applied asking lease rates from locations with better visibility resulting in an unreasonably high income estimate. Petitioner also objects to Respondent's use of a lease beginning in September 2012 as outside the June 30, 2012 value date. Two of Respondent's sales were from centers anchored by major grocery stores and should not have been considered comparable. Petitioner also asserts Respondent has given insufficient attention to the subject's limited parking and older year of construction.

Respondent contends the subject is occupied by "triple A" tenants and Petitioner has focused on sales from neighborhoods commanding much lower rents and two of the comparables were lender owned and should not have been used. Regarding the subject's vacancy Respondent points to tenant improvement expenses paid out by the owner to reconfigure the soon to be occupied space during the base period. Respondent considers Petitioner's income estimate to be artificially low due to emphasis on a recent lease of a unit that is twice the size of the average in the building and by reference to inappropriate comparables such as Lease #2 (post value date), Lease #4 (a 2nd floor office) and Lease #5 (actual rates are $18.00-$22.00, not $12.00-$22.00).

Sufficient probative evidence and testimony was presented to prove that the tax year 2013 valuation of the subject property was incorrect.

The Board finds that Petitioner was persuasive regarding Respondent's use of sales from anchored centers without adjustment. In addition, the use, by either side, of an REO as a comparable sale cannot be accepted by the Board in this circumstance. There were nine transactions used in the two reports presented and six of the nine were market sales.

Respondent's sale 1 and sale 2 are very similar and indicate an average price of $346.86 per square foot for an anchored center in a high traffic, good location. Petitioner's sale 2 does not have an anchor but has a high traffic, good location in the north market. Based upon income alone, an adjustment for an anchor location is approximately 30%. After that adjustment the following indication is obtained:

SALE	Resp. 1 & 2	Resp. 4	Pet. 2	Pet. 4	Pet. 5
$/Sq.Ft.	$346.86	$231.91	$186.42	$94.34	$136.74
Anchor/Traffic	(30%)				
Adj. $/Sq. Ft.	$242.80	$231.91	$186.42	$94.34	$136.74

Petitioner's sale 5, like the subject, is situated off of the primary access. Petitioner's sale 2 is a good location very proximate to Petitioner's sale 5 and comparison of the two suggests a further adjustment of approximately 25% is necessary. Respondent's sale 1 and sale 2 as well as Petitioner's sale 2 are adjusted downward. The resulting indications are now:

SALE	Resp. 1 & 2	Resp. 4	Pet. 2	Pet. 4	Pet. 5
$/Sq.Ft.	$242.80	$231.91	$186.42	$94.34	$136.74
Location	(25%)		(25%)		
Adj. $/Sq. Ft.	$182.10	$231.91	$139.85	$94.34	$136.74

Giving primary weight to the adjusted indications for Respondent's sale 1 and 2 and for Petitioner's 2 the Board determines the appropriate unit value is $160.00 per square foot of gross building area. The indicated value by the market approach is therefore:

24,094 SF (times) $160.00/sf = $3,855,040

The Board was not persuaded by either party's income approach. Petitioner's appraiser placed inordinate weight upon a lease for a space twice the average in the center resulting in a lower unit rate. Petitioner's appraiser applied a 20% vacancy to the collected "triple net" income and then applied an additional 20% deduction for "annual expense ...used for operating, maintenance and reserves". This implies the building is not only 20% vacant but is accruing expenses equal to full occupancy at the same time. Respondent's appraiser, on the other hand, concluded to a market lease rate but chose to present variations of the contract rate in both income approaches. This leaves the Board questioning whether the value presented is fee simple or leased fee.

The Board determined the subject's average contract rate of $18.61 per square foot was reasonably representative of market. Given a range from 10% to 20% vacancy presented by the witnesses, a 15% vacancy was applied. After determination of the effective gross income an additional 5% deduction for management, expenses during vacancy and reserves is applied to reach a net operating income of $358,363. Petitioner's sale 2 and sale 5 as well as Respondent's sale 2 provided overall capitalization rates of 8.63%, 9.25% and 8% respectively. Based on a capitalization rate of 8.5% and a net operating income of $358,363, the indicated value by the income approach is $4,216,030.

The Board considers both approaches to have their strengths and weaknesses. Giving both indications equal weight, a mid-range value opinion of $4,000,000 is the most supportable.

The Board concludes that the 2013 actual value of the subject property should be reduced to $4,000,000.

ORDER:

Respondent is ordered to reduce the 2013 actual value of the subject property to $4,000,000.

The Arapahoe 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-nine 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-nine 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 25th day of March, 2014.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley

Gregg Near

Gregg Near

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

Milla Lishchuk

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