

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LEWIS MELVIN JOHNSON,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 63603</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 25, 2014, Sondra Mercier and MaryKay Kelley presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**9875 West Remington Place, Littleton, Colorado
Jefferson County Schedule No. 69-032-03-008**

The subject property is comprised of a 4,622 square foot “Big O Tires” and a 2,069 square foot “Grease Monkey”, which also has a 2,016 square foot basement (Respondent’s data with minor differences). The improvements were built in 2002 on a 1.135 acre site. The original owner sold the property in 2008 and continues to lease it.

Respondent assigned an actual value of \$3,346,400 for tax year 2013. Petitioner is requesting a value of \$1,150,000.

Petitioner presented the following indicators of value, placing weight on both Market and Income Approaches and reconciling to a value of \$1,150,000.

Market:	\$1,261,220
Cost:	N/A

Income: \$1,093,822

Petitioner's witness, Todd Stevens, Consultant and Principal of Stevens & Associates Cost Reduction Specialists, Inc., presented a Market Approach with four comparable sales ranging in sale price from \$70.11 to \$236.74 per square foot and in size from 4,900 to 5,991 square feet. After adjustments were made, the sales ranged from \$98.15 to \$243.84 per square foot. Placing greatest weight on Sales Two and Four (with adjusted values of \$223.35 and \$243.84, respectively), he reconciled at \$190.00 per square foot or \$1,261,220 for the subject.

Mr. Stevens presented an Income Approach with net revenue of \$13.50 per square foot for the above-ground space based on five comparable leases ranging from \$8.00 to \$14.00 per square foot and a rate of \$5.00 per square foot for the basement space. His vacancy rate of 2.5% was derived from CoStar research (Southwest Retail Submarket auto repair buildings). Rates for management of 3% as well as maintenance and reserves of 5% were not supported. A capitalization rate of 8% (Burbach survey data indicated a range from 7% to 9%) was applied for a value of \$1,093,822.

Mr. Stevens presented an equalization argument with actual values for six properties and performed systematic Market and Income Approaches on each. He argued that the subject's actual value should equal the mean of \$186.77 as derived from the values of the six equalization comparables.

Respondent presented the following indicators of value, placing weight on both Market and Income Approaches and reconciling to a value of \$3,500,000.

Market:	\$2,786,240
Cost:	N/A
Income:	\$3,541,705

Respondent's witness, Darla Jaramillo, Certified General Appraiser with the Jefferson County Assessor's Office, presented a market analysis with four comparable sales ranging in price per square foot from \$244.27 to \$390.49 and in size from 4,900 to 8,707 square feet. After adjustments were made, the sales ranged from \$259.74 to \$390.49 per square foot.

Ms. Jaramillo described the subject's 2008 long-term lease, which has an initial 15-year term allowing for four renewals of three years each for a total term of 27 years and annual increases of 2%. She presented an Income Approach with the subject's net revenue of \$31.13 per square foot as of June 30, 2012. In addition, she presented five auto service properties with lease rates of ten years or greater and determined that, after adjustments, the subject's lease rate was reflective of market. Based on interviews, she defined management fees between 1% and 2%, applying 2%. She applied no vacancy rate due to the subject's long-term lease. Her 7.5% capitalization rate was based on Burbach's Winter 2011/2012 survey ranging from 6% to 10% with a majority listed at 8% and the subject's actual 2008 sale at 7.25%. She concluded to a value of \$3,541,705.76.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

The Board finds the Income Approach is the best indicator of value for the subject, which has two strong tenants and a newer, long-term lease. Respondent's analysis is more convincing because it addresses both market data and the subject itself.

While the parties' revenues are similar, Respondent's estimate is based both on actual rent and comparable rental ranges. The Board agrees that "the consideration of actual rent in determining the value, for ad valorem tax purposes, or real property subject to an existing long-term below-market lease is appropriate." *City and County of Denver v. Board of Assessment Appeals*, 848 P.2d 355, 357 (Colo. 1993).

The Board accepts Respondent's explanation of the subject's long-term lease and, thus, a zero vacancy in the case of the subject. In addition, Respondent's defense of management fees is more thorough and better supported. Respondent's capitalization rate is supported by market data as well as the subject's historical rate.

Petitioner's witness made an equalization argument in support of his value conclusion, presenting a replicated market and income analyses for all six comparables. The Board can consider an equalization argument (comparison of actual values) if evidence or testimony is presented showing that the assigned values of the equalization comparables were derived by application of the market, cost or income approach, and that each comparable was correctly valued. Petitioner's argument was not persuasive, as the analysis provided for the six comparable properties was not the equivalent of a site specific appraisal, but rather a methodical replication of a consistent set of factors. Since that evidence and testimony was inadequate, the Board gave limited weight to the equalization argument presented by Petitioner.

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-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 15th day of October, 2014.

BOARD OF ASSESSMENT APPEALS

Sondra W m

Sondra Mercier

MaryKay Kelley

MaryKay Kelley

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

Milla Lishchuk

Milla Lishchuk

