BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **LSI RETAIL III, LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	**Docket No.: 65711**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 4, 2015 Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2012.

The subject property is described as follows:

8154 and 8194 S. Kipling Parkway, Littleton, CO
Jefferson County Schedule Nos. 451554 and 452275

Petitioner and Respondent stipulated to admission of witnesses as experts, and admission of exhibits. The parties also agreed to consolidate testimony relative to Docket No. 65710 with the hearing for Docket No. 65711.

The property consists of two single story neighborhood retail buildings located approximately at the southeast corner of the intersection of S. Kipling Pkwy. and W. Chatfield Ave. in Unincorporated Jefferson County. The building located at 8154 S. Kipling Parkway which is referenced by Schedule No. 451554 contains 11,633 square feet and is divided into eight retail units. It is located on a 85,085 square foot or 1.953 acre site, and zoning is PD through Jefferson County. The building located a 8194 S. Kipling Parkway which is referenced by Schedule No. 452275 contains 42,263 square feet, and is also divided into eight retail units. This building is located on 351,679 square foot or 8.073 acre site, and zoning is also PD through Jefferson County. Both buildings are masonry construction, were built in 2003, and are reported to be in overall average condition. According to the exhibits provided by Petitioner, the building located at 8194 S. Kipling Pkwy. was 97% leased as of the date of value; however, Wild Oats had vacated but continued to honor the lease payments. The building located at 8154 S. Kipling Pkwy. was 100% leased according to the rent roll provided by Petitioner. It should be noted that two of the previous anchor tenants (Wild Oats and Staples) in the center have vacated.

Petitioner is requesting an actual value of $4,187,300 for the subject property for tax year 2012. Respondent provided an appraisal reflecting a value of $6.500,000 for tax year 2012; however, is deferring to the Board of Equalization's (BOE) assigned value of $6,403,900.

Petitioner presented the following combined (both buildings) indicators of value:

Cost:	Not Developed
Market	Not Developed
Income:	$4,187,300

This includes $3,302,000 for the building located 8194 S. Kipling Pkwy. and $885,300 for the building located at 8154 S. Kipling Pkwy. which totals the $4.187,300.

Petitioner did not provide a cost approach stating that this approach would not be appropriate for an income producing property of this type and vintage. Petitioner also did not develop a sales comparison approach, and justified the omission of this approach based on the lack of similar sales during the 18 months study period.

Petitioner's witness, Mr. Mike Shafer, with Property Tax Refund Consultants, LLC, presented two appraisals containing income approaches to derive a combined value of $4,187,300 for the subject properties. His direct capitalization model consisted of gross income of $10.57 per square foot triple net or $122,961 for the building located at 8154 S. Kipling Pkwy. and $10.85 per square foot triple net or $458,554 for the building located at 8194 S. Kipling Pkwy. based on a review of the rental rates for the subject building, as well as rates paid by other tenants in the center. These rental rates equate to approximately $15.00 for the smaller units, and $10.00 for the larger units. During testimony, Mr. Shafer emphasized the two leases signed within the subject shopping center during the base period at $9.21 and $11.02 per square foot. A long term vacancy and collection loss was estimated at 20% based on a review of published sources and overall occupancy within the center. Non-reimbursable expenses were estimated at 10% of effective gross income. The estimate of net operating income for each of the buildings was then capitalized at a 10.00% overall rate resulting in the indicated combined value of $4,187,300, via an income approach. The allocation of value between the buildings is referenced above.

Mr. Shafer testified that an income approach was the most appropriate methodology in the valuation of a multi-tenant retail property of this type. Mr. Shafer further testified that the rental rates and vacancy and collection loss used in Respondent's direct capitalization model were not reflective of market conditions, and did not consider the leasing during the base period and the overall operation of the property. Mr. Shafer also testified that the property suffered from the negative economic trends that occurred during the statutory base period.

Respondent's witness, Mr. Michael H. Early, MAI, SRA with the Jefferson County Assessor's Office, provided one appraisal that combined the two properties and also did not develop a cost approach. In terms of a market approach, four sales were referenced ranging in price per square foot from $81.00 to $199.00, and reflecting a mean price of $130.00 per square foot prior to adjustment. Two of the sales used in this approach contained major anchors (Safeway and King Soopers), and the remaining two contained "mid-range" anchors such as Vitamin Cottage and Big Five Sporting Goods. Three of the sales contained additional real property (e.g. pad sites), resulting in a value allocation by Mr. Early to the retail strip buildings. After adjustment, Mr. Early concluded to a value of $120.00 per square foot or $6,436,920 via the sale comparison approach. Respondent's witness testified that these sales were the best comparables available, and that secondary weight was given the sales comparison approach relative to the final opinion of value.

Mr. Early also developed an income approach to support his conclusion of value. Some of the rental data contained in this approach was provided to Mr. Early by Petitioner's agent and was cross-checked by market data. Mr. Early also attempted to reconstruct the income approach used by the county at the Board of Equalization hearing to further support this concluded value. In the final analysis, a direct capitalization model was used and consisted of income based on a $17.00 per square foot triple net (NNN) rental rate resulting in a combined gross income of $911,897. A long term vacancy and collection rate was estimated at 10%, and non-reimbursable expenses were estimated at 15% of effective gross income. The net operating income of $697,601 was then capitalized at a 10.6% overall rate including property tax load resulting in an indicated value of $6,581,143. Mr. Early testified that his estimated triple net lease rate and estimated vacancy and collection loss accurately reflected market conditions for the subject. Mr. Early also emphasized that the vacancy rate used by Petitioner was not reflective of the subject given that the tenants in two of the vacant spaces in the center continued to honor their leases and pay rent.

Both Petitioner and Respondent placed most weight on the income approach relative to their conclusions of value. The significant differences between Petitioner's and Respondent's conclusions of value were found in the estimate of market rent ($10.57 & $10.85 v. $17.00) and in the estimate of vacancy and collection loss (20% v. 10%).

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject properties was incorrect.

After careful consideration of the testimony and exhibits presented in the hearing, the Board concurs with the parties that an income approach should be given primary weight relative to the final opinion of value. After review of the variables found in both testimony and the exhibits used by both Petitioner and Respondent, the Board concludes, based on the data and testimony, that a $13.00 triple net rental rate is more indicative of the market for this type of unanchored space during the base period. This concluded $13.00 psf rental rate is based on the market data provided by both parties, as well as a review of the rent roll provided by Petitioner. The same data was reviewed to conclude to a market vacancy rate of 10% given the occupancy of the subject buildings and the overall market, as well as the estimate of non-reimbursable expenses. Petitioner used a 10% overall rate and respondent used a 10.6% rate. The Board concludes to a conservative 10.5% overall rate reflecting both the lack of an anchor, and the residual impact of the unoccupied space within the center. These variables are reflected in the direct capitalization model that follows:

Gross Income					
	Square footage	53,896	sf @	$13.00	$700,648
Total Gross Income					$700,648
Vacancy Factor			@	10.00%	$70,065
Effective Gross Income					$630,583
Expenses NNN psf			@	15.00%	$94,587
Net Operating Income					$535,996
Overall Rate					10.50%
Stabilized Value					$5,104,721
	round				$5,105,000
	per square foot				$94.72

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to $5,105,000.

The Jefferson 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-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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 28th day of September, 2015.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

James R. Meurer

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

Milla Lishchuk