

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SEARS ROEBUCK & CO D/768 TAX B2-109A,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 66183</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 25, 2016, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties stipulated to the admittance of Ron Gazvoda, Senior Commercial Appraiser with the Arapahoe County Assessor’s Office and Steve Letman, MAI with Consultus Asset Valuation, Inc. as expert witnesses. Petitioner’s Exhibit 1 and Respondent’s Exhibits A, B, C, D and E were admitted as evidence.

Subject property is described as follows:

**7001 South University Boulevard, Centennial, Colorado
Arapahoe County Schedule No. 2077-26-1-32-001**

The subject is a freestanding, owner-occupied retail building that was occupied by Sears as of the date of value. Petitioner indicates gross building area of 133,193 square feet situated on a 10.4-acre site. Respondent asserts a slightly smaller building size of 131,201 square feet, suggesting that the difference lies in the mezzanine space. The building was completed in 1974, is in good condition, but has received minimal renovation since completion. The subject is one of two anchor stores at the Streets of Southglenn, a mixed-use redevelopment project that was completed in 2007. Petitioner presented a floor plan identifying spot locations of asbestos contamination within the building and

including the boiler. Respondent was not aware of the issue of asbestos prior to the Rule 11 submission.

Petitioner is requesting an actual value of \$6,050,000 for the subject property for tax year 2015. Respondent assigned a value of \$8,139,000 for the subject property for tax year 2015.

Petitioner presented the following indicators of value:

Land Value: (as if vacant and available for development)	\$7,700,000
Land Value: (after demolition of existing improvements)	\$6,050,000
Income:	\$7,216,000
Market:	\$4,555,000

Petitioner gave consideration to the cost approach primarily to determine if the value of the site exceeded the value of the subject as improved. Mr. Letman first presented land sales to derive a value of the subject site. Five sales were considered in the analysis. The sales indicated prices ranging from \$8.00 to \$23.11 per square foot on sites that ranged from 9.5 to 15.9 acres in size. Mr. Letman determined that Sales 2 and 3, representing the high and low per square foot prices should be given minimal weight in the value of the subject site. He narrowed the range to above \$15.35 but below \$18.95 per square foot, concluding to a value of \$17.00 for the subject site or \$7,700,000 (rounded). This represents the value as if vacant and ready for development. As it exceeds the value indicated by the market and income approaches, Mr. Letman concluded that the cost approach was not relevant.

Petitioner presented an income approach to derive a value of \$7,216,000 for the subject property. Mr. Letman considered three leases and four listings to conclude to a market rental rate of \$5.50 per square foot, with the tenant responsible for expenses (net). Vacancy and collection loss of 9% was then deducted under the assumption that there would be two years of vacancy at the end of a 20-year lease. An additional deduction of 8% represented expenses that the owner would have for replacement reserves, leasing commissions and other non-reimbursed expenses. Five investor surveys were reviewed to determine a capitalization rate of 8.5% as appropriate for the subject given its size as a big box store. Potential gross income was \$732,600, less vacancy of \$65,900 and expenses of \$53,300 to determine net operating income of \$613,400. Capitalized at 8.5%, the income approach indicated a value of \$7,216,000.

Mr. Letman, presented a market approach consisting of three comparable sales ranging in sale price from \$3,800,000 to \$5,220,000 and in size from 107,178 to 151,727 square feet, representing a range of \$32.42 to \$38.72 on a per square foot basis. The three sales had a mean price of \$35.18 and a median of \$34.40 per square foot. The indicated prices included adjustments to Sales 2 and 3 for deed restrictions that limited the retail uses for each building. Mr. Letman concluded to a value of \$34.20 per square foot for the subject or \$4,555,000. As this value fell substantially below the value placed on the land, no consideration was given to this approach.

To determine land value as of the date of value, a deduction of \$1,650,000 was made to cover the cost of building demolition and removal of asbestos. This brought the value to \$6,050,000, which represents the actual value requested by Petitioner for tax year 2015.

Respondent presented the following indicators of value:

Land Value: (as if vacant and available for development)	\$9,520,000
Land Value: (after demolition of existing improvements)	\$8,860,000
Income:	Not applied
Market:	\$9,840,000

Respondent's witness, Mr. Gazvoda, presented a land valuation analysis consisting of six comparable land sales ranging in sale price from \$11.86 to \$37.12 per square foot and in size from 9.510 to 18.390 acres. After adjustments were made, the sales ranged from \$18.92 to \$22.27 per square foot. Mr. Gazvoda applied a value of \$21.00 per square foot to the subject concluding to the value of \$9,520,000 for the subject as vacant and available for development. He then made a deduction of \$656,005 at a rate of \$5.00 per square foot of building area (131,201 square feet) for demolition.

Respondent presented a market approach consisting of five comparable building sales ranging in sale price from \$7,350,000 to \$27,093,284 and in size from 99,600 to 202,847 square feet equal to a range of \$73.80 to \$136.38 per square foot. All five sales were leased at the time of sale. They were taken from a broad geographic area that included Colorado Springs and Pueblo in addition to sales in the southern portion of the Denver metro area. After adjustments were made, the sales ranged from \$73.21 to \$84.31 per square foot. Sales 1, 3 and 5 formed a narrow range of \$73.21 to \$77.48 per square foot and formed the basis of Mr. Gazvoda's value conclusion of \$75.00 per square foot or \$9,840,000.

As the value of the subject as improved exceeds the value as vacant, Respondent concluded to a value of \$9,800,000, which supports the 2015 assigned value of \$8,139,000.

At issue in this case is highest and best use of the subject as of the date of value. Petitioner asserts that the value of the site, at \$7,700,000, exceeds the value of the property as improved. Petitioner presented a land valuation analysis where five land sales are considered, qualitatively analyzed, but not adjusted to determine the value of the subject site as if vacant. Petitioner then proceeds to make a significant deduction of \$1,650,000 to cover the cost of building demolition and removal of asbestos, lacking support for the spot removal of asbestos. The resulting land value of \$6,050,000 falls below the value indicated by the income approach, at \$7,216,000. This indicates that there is some value attributable to the existing building.

Respondent takes a similar valuation approach, determining that the value of the subject as currently improved, at \$9,840,000 exceeds the value of the land, at \$8,860,000 after deducting the costs of demolition and asbestos remediation. The Board was convinced that while the building was nearing the end of its economic life, some value remained associated with the improvement.

The Board must then consider the data, analysis and testimony presented by both parties to determine the value. Petitioner presented both a market and income approaches. In market approach, Petitioner relied on three sales to conclude to a value of \$4,555,000, with no adjustments made to the comparable sales, thus making it the least reliable indicator of the subject's value.

Petitioner also applied an income approach to value the subject. Three lease transactions were used to support a rental rate of \$5.50 per square foot for the subject. Vacancy of 9% and owner's expenses (including reserves) of 8% were then deducted, with limited market support provided for either factor. Petitioner relied on investor surveys to conclude to a capitalization rate of 8.5%. Petitioner's income approach lacked detail and did not hold up under cross-examination or Respondent's rebuttal evidence.

Respondent provided no income approach, but relied on the market approach in determining the indication of value. Five comparable sales were presented and adjusted to produce a value of \$9,840,000 using the market approach, a value well in excess of the assigned value for tax year 2015. Although all five sales were leased at the time of sale, the remaining lease terms ranged from four to eight years and were not proven to have an impact on value.

Respondent also presented a convincing market approach to value the subject land, as if vacant. Six sales were analyzed and adjusted, a deduction was made for demolition, and the resulting value of \$8,860,000 also exceeds the 2015 assigned value.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

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 20th day of June, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier

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

Milla Lishchuk
Milla Lishchuk

