

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>KIMCO EAST BANK 689 INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 66471</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 23, 2016, Diane M. DeVries, MaryKay Kelley and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. and Rachel Poe, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The property identified as parcel number 2073-06-3-97-001 (Schedule No. 035122930) was withdrawn by Petitioner at hearing. Petitioner's Exhibits 1 through 5 were admitted as evidence. Respondent's Exhibit A was admitted as evidence and Jeff Hamilton, Certified General Appraiser with the Arapahoe County Assessor's Office was admitted as an expert witness before the Board.

Subject property is described as follows:

**4000-4102 S. Parker Road, Aurora, Colorado 80014**  
**Arapahoe County Schedule Nos. 033804422, 033804449, 033804457, 035122948,**  
**035122956 and 035122964**

The subject is a multi-tenant shopping center with 145,610 square feet of net rentable area. The improvements were constructed in 1981, and are situated on a 598.603 square foot (13.74 acre) site.

Petitioner is requesting an actual value of \$8,200,000 for the subject property for tax year 2015. Respondent assigned a value of \$9,768,000 for the subject property for tax year 2015.

Mr. Rick Turner, Director of Real Estate with Kimco Realty Corporation, testified on behalf of Petitioner. Mr. Turner testified to the difficulties associated with the subject's location and layout. He also provided an analysis of the rent-roll in place, issues with vacancy, and what he believed to be appropriate rental rates for the subject on the June 30, 2014 date of value.

While Mr. Turner reported high traffic count on Parker Road, access from southbound Parker Road was described as dangerous with no traffic light. Secondary access is available from Quincy across the adjacent parcel to the south of the center. The subject's trade area was described as "180 degrees" based on the location across from Cherry Creek State Park.

Mr. Turner described the 21,600 square foot northernmost building as being the most traditional for layout and size; however, he believed that parking, visibility, and access were poor. Mr. Turner suggested market rent of \$8.00 for the larger western 12,000 square feet of that building, with a higher \$11.00 rate being appropriate for the six smaller remaining units. Rents for retail space were per square foot and net of expenses.

The 40,421 square foot building located at the northeast portion of the site includes four units, one of which is leased to Dollar Tree (14,301 square feet). Mr. Turner described this building as having low ceiling heights, poor visibility, larger unit sizes, and a challenging configuration. He proposed market rent of \$5.50 per square foot as appropriate for this building.

A two-story, 11,250 square foot building that is currently leased, but no longer occupied by Key Bank was described as old and antiquated in design. Key Bank vacated the property prior to the base period and the lease expires in 2017. Mr. Turner placed market rent for this building at \$9.00 per square foot net of expenses.

The remaining 72,340 ±square-foot building is anchored by 24-Hour Fitness. The in-line units on either side of the anchor space were described as being odd-shaped and "deep" measuring up to 120 feet, with tenants taking a long and narrow unit. Mr. Turner testified that a rental rate of \$7.00 per square foot would represent the market for the large anchor space as of the date of value. Rates ranging from \$8.00 to \$11.00 were suggested as representative of market for the remaining in-line space.

Petitioner owns the land, but not the building that is leased to 24-Hour Fitness, via a sublease agreement with Albertsons, who once occupied the space. Overall, Mr. Turner concluded that functional issues with the center prevented it from reaching occupancy above 75%.

Respondent presented the following indicators of value:

Market:	\$12,380,000
Cost:	Not applied
Income:	\$12,650,000

Mr. Hamilton, testifying on behalf of Respondent, presented five comparable sales ranging in sale price from \$4,675,000 to \$11,250,000 and in size from 71,102 to 190,775 square feet, representing an unadjusted range of \$43.24 to \$82.08 per square foot. Mr. Hamilton made adjustments for conditions of sale, location, size, year of construction, frontage, and quality. After adjustments were made, the sales ranged from \$80.02 to \$85.77 per square foot. He concluded to a value of \$85.00 per square foot or \$12,380,000 using the market approach.

Respondent used the income approach to derive a value of \$12,650,000 for the subject property. Mr. Hamilton first analyzed the subject as if it had reached stabilized occupancy, then applied a discount for the time and cost of reaching stabilization. The subject was categorized as four types of space: small, medium, large box retail and bank. Eight comparable rental properties were analyzed to determine rent for the retail space. Rent for the subject's smaller units was concluded at \$12.00 per square foot net of expenses based on a range of \$11.85 to \$14.00 indicated by comparable rentals 1, 2 and 3. Market rate for the subject's medium sized units was set at \$10.00 per square foot based on an indicated range of \$9.00 to \$12.50, relying on comparable rentals 4, 5 and 6. Comparable rentals 7 and 8 were used to determine the appropriate market rent for the larger anchor space at \$7.00 per square foot. The rental rate for the bank space was based on the actual rent being paid by Key Bank at \$19.61 per square foot. Potential gross income was calculated at \$1,520,911.

Vacancy and collection loss of 10% was deducted along with owner's expenses at 4.0% for management, 3.0% for general administrative expense, and 3.0% for reserves. Net operating income was calculated as \$1,231,938. A capitalization rate of 9.0% was applied after an analysis of investment surveys and capitalization rates for the comparable sales. The value as if the property were stabilized was \$13,690,000. Mr. Hamilton then performed an analysis to determine the cost associated with reaching stabilized occupancy, under the assumption that a 10% vacancy would be reached over a three-year period. He concluded to a deduction of \$1,040,000, bringing the value of the subject to \$12,650,000 using the income approach.

Mr. Hamilton placed the greatest reliance on the income approach to reconcile the value of the subject to \$12,650,000, which he felt was supported by the market approach.

Respondent assigned an actual value of \$9,768,000 to the subject property for tax year 2015.

After consideration of the cost, market and income approaches to value, the Board agrees with the parties that the income approach provides the most reliable indication of the value for the subject.

In consideration of the income approach, both parties agreed that the subject should be valued as one operating unit. Both assigned a rental rate of \$7.00 per square foot to the space occupied by 24-Hour Fitness and both suggested that a 9.0% capitalization rate was appropriate.

Petitioner assigned rental rates to various portions of the center that ranged from \$5.50 to \$11.00 per square foot net of expenses. The Board calculates the average rent suggested by Mr. Turner would be approximately \$7.50 per square foot for the center. Support for those rates was

based on the most recent leases signed within the center and Mr. Turner's opinion as an active market participant.

Respondent assigned rental rates to various portions of the center based on unit size, with rents ranging from \$7.00 to \$12.00 per square foot for the small, medium, and anchor space. The average rent indicated by Respondent's analysis is calculated by the Board as just under \$9.70 per square foot. With one exception, support came from an analysis of actual rents generated by the subject, an analysis of eight comparable rental properties, and a review of market surveys. Respondent based the \$19.61 per square foot rent applied to the former bank space on the actual lease agreement, which the Board was convinced was negotiated well before the statutory base period.

While leases signed during the base period provide one indication of market rent, the Board finds that Respondent's analysis of market rent is better supported by the survey data and analysis of comparable rental properties. The exception is Respondent's assignment of the actual rent to the vacant bank space. For comparison purposes, the Board will utilize Mr. Turner's suggested rental rate of \$9.00 per square foot for that portion of the space. Making that adjustment, the Board calculates the potential gross income as \$1,401,548.

The most convincing aspect of Petitioner's case was Mr. Turner's contention that the subject suffered from prolonged high vacancy and credit loss. Several functional issues were cited, including poor access, irregular unit configuration, large unit size, and limited trade area. Vacancy of 25% to nearly 30% was reported, with vacancy on the date of value at 27%. The functional issues cited cannot be cured; consequently, the Board believes that stabilized vacancy for the subject would more reasonably be 25%.

Changing the concluded rental rate for the bank space and the deduction for vacancy, the Board's recalculated value of the subject supports Respondent's assigned value as follows:

Space Type	Rate \$ or %	Square Footage	Annual Rent
Small Retail	\$12.00	41,193	\$494,316
Medium Retail	\$10.00	51,271	\$512,710
Large Box Retail	\$7.00	41,896	\$293,272
Bank Space	\$9.00	11,250	<u>\$101,250</u>
			\$1,401,548
	25.0%		- \$350,387
			\$1,051,161
Management	4.0%		- \$42,046
General Admin.	3.0%		- \$31,535
Reserves	3.0%		<u>- \$31,535</u>
			\$946,045
Capitalization Rate	9.0%		\$10,511,610

Although Petitioner called into question various aspects of Respondent's appraisal, 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).

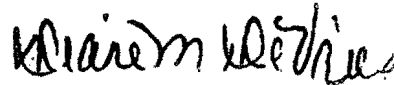
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

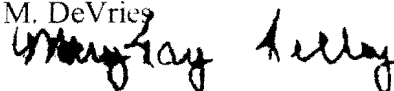
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 4th day of August, 2016.

**BOARD OF ASSESSMENT APPEALS**



Diane M. DeVries



MaryKay Kelley

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



Milla Lishchuk



Sondra W. Mercier

