

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 67855**

Petitioner:

**MYERS RESTAURANT PROPERTIES LLC,**

v.

Respondent:

**DOUGLAS COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on June 28, 2016, Debra A. Baumbach, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties stipulated to the qualifications of the expert witnesses.

Subject property is described as follows:

**8645 S Quebec Street  
Highlands Ranch, Colorado 80130  
Douglas County Schedule No. R0448932**

The subject site is improved with a restaurant building containing 10,060 square feet constructed in 1997 and expanded with an atrium addition in 2011 for a total of 13,642 square feet. The building is 2-story design with restaurant and bar areas on both levels. The addition expanded the upper level with a dining atrium and outside deck seating. The valuation in question is solely for the building improvements.

Petitioner presented the following indicators of value:

Market: \$1,568,830  
Cost: \$1,476,583

Income: \$1,436,394

Petitioner is requesting an actual value of \$1,460,000 for the subject property for tax year 2015. Respondent assigned a value of \$2,275,892 for the subject property for tax year 2015.

Petitioner's witness, Mr. Todd Stevens of Stevens & Associates, presented a market approach consisting of four comparable sales ranging in sale price from \$500,000 to \$1,615,900 and in size from 5,279 to 9,300 square feet. After adjustments were made, the sales ranged from \$48.43 to \$129.64 per square foot. Mr. Stevens concluded to a value of \$115.00 per square foot as reasonable for the subject. Application of this unit value to the improvement size resulted in a value of \$1,568,830 by use of the market approach.

Mr. Stevens presented a cost approach to derive a market-adjusted cost value for the subject property of \$1,476,583.

To determine the contributory value of the improvements, the witness relied upon the Marshall Valuation Service Calculator Cost Form, concluding to a Replacement Cost New estimate of \$2,163,515. A depreciation estimate of 31% was applied resulting in a Replacement Cost New less depreciation of \$1,476,583.

Petitioner's witness presented an income approach to derive a value of \$1,463,394 for the subject property. Mr. Stevens considered information from three lease transactions indicating a range of triple net (NNN) lease rates of \$16.50 to \$19.00 per square foot of rentable area. After concluding to a rate of \$17.00 per square foot and a gross income of \$231,914 the witness applied a vacancy allowance of 5% to determine effective gross income. A 10% deduction was applied for owner's operating, maintenance and reserve expenses. Based on the above, annual net income was estimated to be \$198,286. Vacancy was based upon research obtained by the witness for 59 buildings within a 3-mile radius of the subject. A capitalization rate of 8.5%, derived from secondary sources, was applied to the net income to determine a value opinion of the improved property. Land value, as determined by the Assessor, was subtracted from the total to reach the contribution of the improvements.

Respondent offered exhibits A through U at the hearing as follows:

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
A	Douglas County Assessor Property Profile
B	Subject Neighborhood Aerial
C	Subject Assessor Map
D	Subject Sketch
E	Subject Aerial
F	Subject Photographs
G	Restaurant Models R05 & R10
H	Property Summary Report: 8545 S Quebec St.
I	Comparable Improved Sales

J & K	Property Summary Report: 9595 E Arapahoe Road
L & M	Property Summary Report: 14035 E Evans Ave.
N & O	Property Summary Report: 310 S Wilcox St.
P & Q	Property Summary Report: 9355 Crown Crest Blvd.
R	Lease Comp Summary
S	Docket No. 67849, Gyrls Group LLC
T	Standard 5: Real Property Appraisal Consulting, Reporting
U	Standard 2: Real Property Appraisal Reporting

Petitioner objected to the admission of Exhibit A and the remaining exhibits at the onset of the hearing. Petitioner stated the Exhibit(s) are not an appraisal; do not have a signature to identify the person accountable; provide no conclusions; the rebuttal information concludes to value and the submittal(s) were late. The Board admitted all Exhibits over the objections of Petitioner and indicated the information would be given the weight it deserved.

Respondent presented the following indicators of value:

Market: \$2,275,892  
 Cost: Not applied  
 Income: Not applied

Respondent’s witness Mr. Stephen Snyder, a Certified General Appraiser, presented testimony in support of the assigned value determined through the county’s mass valuation process. Exhibit A-1 was described as the current property profile. The witness stated exhibit A-3 was not “calibrated” and was not relied upon as there was no reliance upon the cost approach. Exhibits A through F were stated to be a “collection of data”; “not an appraisal report” and “(the) results of a Standard 6 appraisal”.

Mr. Snyder identified Exhibit G as the mass valuation data relied upon in establishing the subject’s assigned value via the market approach. The witness indicated two models were developed, one for the category “restaurant” and a second for “atrium dining”. For the restaurant category six sales were identified as Model R05. The sales ranged in price from \$967,500 to \$1,750,000 and in size from 4,010 to 6,796 square feet. No adjustments were made. A “Recommended PSF” of \$245.00 was concluded. For atrium dining nine sales were identified as Model R10. The sales ranged in price from \$500,000 to \$1,500,000 and in size from 2,480 to 9,300 square feet. No adjustments were made. A “Recommended PSF” of \$190.00 was concluded. Exhibit I illustrates the calculations applied to the separate portions of the improvements to determine the assigned value of \$2,275,892.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect. “A taxpayer’s burden of proof in a BAA proceeding is well-established: a protesting taxpayer must prove that the assessor’s valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding.” *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005).

Petitioner presented all three approaches to value. The indication of value from Petitioner's cost approach (\$1,476,583) is similar to Respondent's Replacement Cost New Less Depreciation (RCNLD) (\$1,484,260). Both of these value indicators are substantially less than the Respondent's assigned value for the subject property of \$2,275,892.

The indication of value from Petitioner's income approach (\$1,436,394) is also substantially less than Respondent's assigned value for the subject property. While the Board believes that the 8.5% capitalization rate used by Petitioner in the income approach may be high, there is market support for an 8.07% capitalization rate (see page 2-8 of Petitioner's Exhibit 2). Using an 8.07% capitalization rate would result in a value indication under the income approach of \$1,587,688 (after deducting the 2015 land value) – still substantially less than the \$2,275,892 assigned value for the subject property.

The Board was less convinced by Petitioner's market approach. The Board did not find Petitioner's Sales 1, 2 and 3 to be sufficiently comparable to the subject property. However, Petitioner's Sale 4 was also used by Respondent. The Board finds Petitioner's Sale 4 (also shown as Respondent's Sale 4 for Restaurant Model R05 on Respondent's Exhibit I) is sufficiently comparable to the subject property to be analyzed and used in the market approach. The Board also finds Petitioner's adjustments to this sale to be reasonable. Applying the adjusted price per square foot of \$129.64 from this sale to the subject property indicates a value of \$1,768,549 for the subject property under the market approach.

The Board was also convinced by Petitioner that Respondent's mass appraisal market approach did not result in a correct assigned value for the subject property. The Board was convinced that 10 of the 14 properties used in Respondent's mass appraisal were not sufficiently comparable to the subject property. Three of these properties were located outside of the Denver-metro area. Four others were residential conversions bearing no reasonable resemblance to the subject property. One of the properties was a liquidation transaction and appears to have had significant deferred maintenance. Two others had building improvements that were 70% to 80% smaller than the subject and were significantly older than the subject property. While it appears to the Board that Respondent's remaining sales (Respondent's Sales 1, 5 and 6 of Restaurant Model R05) could be used in a market approach, the sales were not adequately analyzed to give the Board confidence that the unadjusted sale prices used by Respondent resulted in a correct assigned value for the subject property.

Based on the evidence submitted, the Board is convinced that the assigned value of the subject property was incorrect. Petitioner's evidence was also sufficient to further establish the subject property's value for tax purposes. See *Sampson*, 105 P.3d at 208 (The BAA members' expertise enables them to determine from the evidence presented by the taxpayer whether the county's valuation is incorrect. The taxpayer's may also be sufficient to further establish the subject property's value for tax purposes).

The Board has developed the following opinions from the information presented:

Market:           \$1,768,549

Cost: \$1,480,000  
Income: \$1,587,688

The Board believes secondary weight should be given to the market approach, given the limited sales information available to the Board. With primary weight to the cost and income approaches, the Board has determined the appropriate actual value for the subject property to be \$1,600,000.

**ORDER:**

Respondent is ordered to reduce the 2015 actual value of the subject property to \$1,600,000.

Douglas 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 5th day of August, 2016.

BOARD OF ASSESSMENT APPEALS

*Debra A. Baumbach*

Debra A. Baumbach

*Gregg Near*

Gregg Near

*Diane M. DeVries*

Diane M. DeVries

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

*Milla Lishchuk*

Milla Lishchuk

