BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **700 EAST SPEER LLC AND EL CONDOR APARTMENTS LLC,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 68056**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 15, 2016 Debra A. Baumbach and James R. Meurer presiding. Petitioners were represented by Richard G. Olona, Esq. Respondent was represented by Noah Cecil, Esq. Petitioners are protesting the 2015 actual value of the subject property.

The subject property is described as follows:

455 Sherman St, Denver, CO
Denver County Schedule No. 05101-06-036-000

Petitioners and Respondent stipulated to admission of Mr. Todd Stevens and Mr. Richard Phinney as expert witnesses, and further stipulated to admission of Petitioners' Exhibits 1 and 2 and Respondent's Exhibits A and B.

The property consists of a five-story office building containing 117,731 net rentable square feet located at Lincoln St. and Speer Blvd., just outside of the Central Business District of the City and County of Denver. The construction of the building began in 1981 and the structure is attached to a two-story garage. Exterior and interior finish includes a brick and glass facade, twelve foot floor heights, painted drywall interiors, carpet and vinyl floor coverings and five passenger elevators. The garage has 286 covered parking spaces and 42 roof top spaces. HVAC is via a forced air system, and utilities are publically provided. Lot size is 1.43 acres and zoning is CMX-8 through Denver. According to county records, a new $230.000 chiller was installed in 2012, and tenant finish permits issued since 2001 totaled $418,688. The property is reported to be well-maintained and in overall average to above average condition. The occupancy level of the building as of the valuation date was not disclosed by the parties

Petitioners are requesting an actual value of $11,600,000 for the subject property for tax year 2015. Respondent provided an appraisal reflecting a value of $17,365,000; however, is deferring to the assigned value of $17,050,200 for tax year 2015.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market	$11,537,638
Income:	$11,662,737

Petitioners' witness, Mr. Todd Stevens, President of Stevens and Associates Cost Reduction Specialists, Inc., developed a market (sales comparison) approach that included five comparables ranging in sales price from $6,615,500 to $21,200,000, and in size from 55,209 square feet to 225,927 square feet. Sales prices on a per square foot basis ranged from $80.26 to $119.83. All of the sales were office buildings; three of which were located in the Denver versus remaining two sales that were selected from suburban submarkets. The major adjustments to the sales consisted of conditions of sale, location, age, economic characteristics (leasing), physical characteristics, and square footage. Petitioners made no adjustment for date of sale. After adjustments were made, the sales ranged from $89.70 to $113.84 on a per square foot basis. With emphasis on all of the comparables, Mr. Stevens concluded to a final value of $98.00 per square foot or $11,537,638 for the subject land and improvements.

Mr. Stevens also presented an income approach to support his concluded value. A direct capitalization model was used, and consisted of gross income of $7.25 per square foot triple net or $853,550 based on a review of the rental comparables, as well as leases executed in the subject during the base period. Parking income was estimated at $203,700. A long term vacancy and collection loss was estimated at 10% based on a review of published sources. Non-reimbursable expenses were estimated at 10% of effective gross income. The net operating income of $874,705 was then capitalized at a 7.50% overall rate derived from published sources, which resulted in the indicated value of $11,662,737 via the income approach.

The income and market approaches were given equal consideration in the concluded value of $11,600,000. Mr. Stevens argued that the variables employed by Respondent, specifically the estimated rental rate in the income approach, were not reflective of the subject as of the valuation date, and that Respondent did not account for rental concessions applicable to the subject. Mr. Stevens also argued that the "A" classification of the property by Respondent was not accurate, and that no time (date of sale) adjustment was supportable in the (Respondent's market approach given the comparables' dates of sale, and market conditions for office properties in this location during the base period. In addition, Mr. Stevens testified that the Assessor's final value of $17,050,200 constituted a 34% increase from the previous 2013/14 value.

Petitioners' witness testified that the cost approach was considered, but not applied.

Respondent presented the following indicators of value:

Cost:	$23,375,500
Market	$16,246,900
Income:	$17,365,000

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser with the Denver County Assessor's Office, developed a cost approach but gave it minimal weight in the conclusion of value due to the age of the property. Mr. Phinney arrived to the land value of $55.00 per square foot, or $3,437,500.

Mr. Phinney developed a market approach that included four comparables ranging in sales price from $3,025,000 to $73,250,000, and in size from 27.335 square feet to 317,033 square feet. Mr. Phinney used lump sum adjustments in his approach for the differences in economic and physical characteristics between the subject and the comparables based on a lease rate analysis of the subject and the comparables. After adjustments were made, the sales ranged from $112.44 to $154.11 on a per square foot basis. With emphasis on Comparables Nos. 1, 2, and 4, Mr. Phinney concluded to a final value of $138.00 per square foot or $16,246,900 for the subject land and improvements.

Mr. Phinney also developed an income approach to support his conclusion of value. A direct capitalization model was used, and consisted of gross income of $21.41 per square foot full service or $2,520,620 based on his interpretation of the subject leases signed during the base period. Parking revenue was estimated at $203,500, vacancy and collection loss at 10%, and full service expenses were estimated at $6.75 per square foot. The net operating income of $1,677,376 was then capitalized at a 9.66% overall tax loaded rate derived from published sources, which resulted in the indicated value of $17,365,000 or $147.50 per square foot, via the income approach.

Respondent placed primary weight on the income approach in arriving at the concluded value of $17,365,000. Mr. Phinney argued that Petitioners did not adjust for date of sale or properly account for expenses pertaining to the subject, specifically Petitioners did not separate annual expenses from capitalized improvement costs in their rental rate analysis.

Petitioners presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject properties was incorrect.

After careful consideration of the testimony and exhibits presented in the hearing, the Board concludes that the income approach should be given primary weight relative to the final opinion of value for an income producing, office property of this type, size, and vintage. The Board concludes that Petitioners' and Respondent's market approaches were not sufficient to conclude to a supportable indication of value. Further, the lump sum adjustments employed in Respondent's adjustment grid that simply use a lease rate comparison lack description, and do not appear to capture all of the line-item economic and physical components applicable to the comparables.

After review of the variables found in the exhibits and testimony used by both Petitioner and Respondent, the Board recalculates the direct capitalization model and resulting value as follows:

Lease Income					
Net Rentable Square footage	117,731	sf @	$11.00	$1,295,041	NNN
Parking Income				$203,700	
Total Gross Income				$1,498,741	
Vacancy Factor		@	10.00%	$149,874	
Effective Gross Income				$1,348,866.90	
Expenses NNN psf		@	10.00%	$134,887	
Net Operating Income				$1,213,980	
Overall Rate				7.25%	
Stabilized Value				$16,744,555	
round				$16,745,000	
per square foot				$142.23	

Relative to the above recalculated model, the Board concludes, based on the exhibits and testimony, that an $11.00 triple net rental rate is most indicative of the market rent for this type of office space. A triple net rate is used in the recalculation given the lack of data provided on the individual line-item expenses for the subject. The Board also concludes that the triple net rental rates estimated by Petitioners are artificially low, possibly because they include inappropriate expenses. Both parties' data, as well as the occupancy, age, and location of the subject were reviewed to conclude to a "long term" vacancy rate of 10%. Also the data and testimony was used to estimate non-reimbursable expenses at 10%. Petitioners used a 7.50% overall rate and Respondent used a 7.25% rate (although Respondent's final rate of 9.66% included a tax load given Respondent's full service lease structure). The Board concludes that 7.25% overall rate is most supportable based on the published sources and testimony provided by the parties.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to $16,745,000.

The Denver 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 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 29th day of September, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

SEAL

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

Milla Lishchuk