

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 68128

Petitioner:

HARMAN MANAGEMENT CORPORATION,

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 19, 2016, Gregg Near and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Noah Cecil, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The subject property is described as follows:

**2044 S. Colorado Blvd., Denver, CO
Denver County Schedule No 0630218020000**

Petitioner and Respondent stipulated to the admission of Mr. Todd Stevens and Mr. Greg Feese as expert witnesses, and further stipulated to admission of Petitioner's Exhibits 1 and 2 and Respondent's Exhibits A, B, and C.

The property consists of a masonry fast food restaurant building occupied by two tenants (KFC and A&W) located at the northeast corner of S. Colorado Blvd and E. Evans Ave. in the City and County of Denver. The building was constructed in 2002 and contains 3,013 gross rentable square feet. Site size is 30,967 square feet or 0.71 acres, zoning is CMX (Urban Central-Mixed Use) through Denver, and all utilities are publicly provided. The building is 100% occupied and reported to be in overall above average condition.

Petitioner is requesting an actual value of \$900,000 for the subject property for tax year 2015. Respondent provided an appraisal reflecting a value of \$2,168,700 which supports the assigned value of \$1,549,400 for tax year 2015.

The significant difference between Petitioner's and Respondent's values results in the conclusion of the highest and best use of the property by each party. Petitioner asserts that the highest and best use is the current fast food use and valued the property accordingly. Respondent contends that the highest and best use of the property is for commercial redevelopment at some future date, either as a stand-alone parcel or as an assemblage with adjoining parcels, and valued the property based on this conclusion.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market	\$1,084,680
Income:	\$858,705

Petitioner testified that the cost approach was considered, but not applied.

Petitioner's witness, Mr. Todd Stevens, President of Stevens and Associates Cost Reduction Specialists, Inc., developed a market (sales comparison) approach that included five improved (land and building) comparables ranging in sales price from \$950,000 to \$1,475,000, and in size from 2,903 square feet to 4,216 square feet. Sales prices on a per square foot basis ranged from \$249.05 to \$396.61, and all of the sales were fast food buildings located in the Denver Metropolitan area. The major adjustments to the sales consisted of location and age. Petitioner made no adjustment for date of sale. After adjustments were made, the sales ranged from \$261.50 to \$376.78 on a per square foot basis. With emphasis on all of the comparables, Mr. Stevens concluded to a final value of \$360.00 per square foot, resulting in a total value of \$1,084,680 via the market approach.

Mr. Stevens also presented an income approach to support his concluded value. After a review of four lease comparables, a direct capitalization model was used and consisted of income calculated at \$25.00 per square foot triple net, or gross income of \$75.325. A long term vacancy and collection loss was estimated at 5% based on a review of published sources. Non-reimbursable expenses were estimated at 10% of effective gross income. The net operating income of \$64,403 was then capitalized at a 7.50% overall rate derived from published sources, which resulted in the indicated value of \$858,705 via the income approach.

Mr. Stevens testified that the income approach was given primary consideration in the concluded value of \$900,000. Mr. Stevens argued, as noted above, that the highest and best use of the subject was for continued use as a fast food restaurant and it should be valued as such. Mr. Stevens further argued that any change in use or redevelopment of the property would be a speculative future use, and that properties adjacent to the subject have been valued at a much lower rate by Denver County.

Respondent presented the following indicators of land value:

Cost	Not Developed
Market	\$2,168,700 (land value)
Income	Not Developed

Respondent's witness, Mr. Greg Feese, a Certified General Appraiser with the Denver County Assessor's Office, developed a market approach that included four land comparables ranging in sales price from \$460,000 to \$7,700,000, and in size from 7,243 square feet to 77,058 square feet. Sales prices on a per square foot basis ranged from \$60.43 to \$104.92, and all of the sales were located along Colorado Blvd. The major adjustments to the sales consisted of location, square footage, utility, and zoning. After adjustments were made, the sales ranged from \$67.08 to \$90.23 per square foot. With emphasis on Comparable Nos. 1 and 3, Mr. Feese concluded to a final value of \$70.00 per square foot or \$2,167,700 for the subject lot.

Mr. Feese argued that based on his analysis and the customary four tests for highest and best use, the most *financially feasible and maximally productive* use of the subject would be to redevelop the property at some future date, and that this redevelopment given his concluded land value would be a reasonable future use rather than a speculative future use.

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

In reaching a decision regarding this appeal, the Board gave careful consideration to the testimony, the exhibits, the four tests of highest and best use including physically possible, legally permissible, financially feasible, and maximally productive uses, as well as the Colorado Supreme Court's decision in the *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1998).

The Board concludes that the land value of the subject lot exceeds the estimated market value "as is" of the land and improvements. Based on the consideration of these factors, the Board concludes that, given the market value of the land and development trends along the Colorado Blvd. corridor, the redevelopment of the subject property into commercial use, as suggested by Respondent, is considered to be a *reasonable* future use, and the market value of the subject is best reflected by Respondent's opinion of value for tax year 2015. Relative to Respondent's value, the sales employed in Mr. Feese's analysis are all in close proximity to the subject (i.e. Colorado Blvd.); Mr. Feese's adjustments to the sales are reasonable and his analysis concludes to a supportable market value for the subject.

In addition to the above, Petitioner argues that the $\pm 86\%$ increase from the prior years' actual value is unreasonable. However, given that this is a de novo hearing, prior year assessments are not relevant to this proceeding

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 21st day of November, 2016.

BOARD OF ASSESSMENT APPEALS

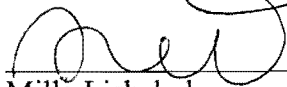


Gregg Near



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

