BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **900 SOUTH BROADWAY, LLC,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 68322**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 4, 2016, Debra A. Baumbach, James R. Meurer and Gregg Near presiding. Petitioner was represented by Thomas E. Downey Jr., Esq. Respondent was represented by Chuck Solomon, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties agreed to the admission of Petitioner's Exhibit 1, Respondent's Exhibit A and to the expert witnesses.

Subject property is described as follows:

> **900 South Broadway, 990 South Broadway and**
> **100 East Tennessee**
> **Denver, Colorado**
> **Denver County Schedule Numbers 05156-25-003-000, 05156-25-002-000 and 05156-27-001-000.**

The subject property consists of three buildings and a 467 square foot parcel of vacant land. The property is located at the southeast intersection of S. Broadway and Interstate 25. These parcels represent a portion of the former Gates Rubber Company ownership and are identified as 900 S. Broadway, 990 S. Broadway and 100 E. Tennessee Avenue. The parties did not completely agree regarding building size(s). The following summarizes the information presented:

Address	Petitioner	Respondent
900 S. Broadway	159,371	150,731
990 S. Broadway	148,443	159,371
100 E. Tennessee Avenue	10,239	10,239
Total:	318,054	320,341

900 S. Broadway was constructed in 1903 and renovated in 2007 according to Petitioner. Petitioner indicates that the 990 building was constructed in 1984 and also renovated in 2007. 100 E. Tennessee Avenue is a multi-level parking structure with ground level offices. Respondent indicated a 1938 year of construction (YOC) for 900 S. Broadway with an effective YOC of 1982. Per Respondent, the 990 building was constructed in 1985 and has an effective YOC of 1999. The parties also disagreed regarding the number of spaces within the parking structure.

Petitioner presented the following indicators of value:

Market:	$41,347,000 to $50,888,640
Cost:	Not applied
Income:	$53,000,000

Petitioner is requesting an actual value of $53,000,000 for the subject property for tax year 2015. Respondent assigned a value of $64,580,400 and is providing a site specific appraisal for $73,250,000 in support.

Petitioner's witness, Ms. Krystal Arceneaux, a managing member of EverWest Real Estate Partners, testified to her involvement in the acquisition of the subject property by Walton Broadway Station Investors VILL on July 22, 2014 for $73,250,000. Ms. Arceneaux explained the discounted cash flow (DCF) analysis that was applied to the property leading to the eventual purchase. The witness pointed to a number of factors considered when purchasing the subject, such as future development potential; proximity to light rail and transit-oriented development (TOD); and the subject's "value add" position based on expected growth and potential development of the front plaza.

In her analysis of the local market, Ms. Arceneaux noted the subject sub-market to be a "challenge." There is limited Class A office space available nearby, so the potential tenants are drawn to the larger Central Business District and Colorado Boulevard markets. The witness noted the 900 S. Broadway building was older, with high ceilings, and not all of the finish was Class A. The 990 building has functional problems due to irregular floorplates, an inadequate and unsafe raised walkway connection to the structure, a raised floor and too much common area.

Petitioner presented Mr. Gary James Mycock of R. H. Jacobson & Co. as a witness. Mr. Mycock testified to the development of Petitioner's Exhibit 1 along with Mr. Edward Bosier, also of R.H. Jacobson & Co.

Mr. Mycock presented a "Sales Comparison Value Estimate" containing five comparable sales ranging in sale price from $16,600,000 to $41,600,000 and in size from 151,425 to 280,744 square feet. Prior to adjustment, the sales ranged from $93.84 to $240.24 per square foot of building area. The witness made no adjustments to the comparable sales but ranked all of them from superior to slightly superior and concluded to a range of probable sale prices from $130.00 to $160.00 per square foot, or $41,347,000 to $50,888,640.

Mr. Mycock presented an income approach to derive a value of $53,000,000 for the subject property. The witness first considered the subject actual rents during the base period. Mr. Mycock determined a range of triple net (NNN) rents for the subject per the rent rolls for 1/31/13 and 5/1/14 of $9.22 to $16.46 per square foot. The witness determined the average rate for 2014 was $14.70 per square foot and concluded to a rate of $15.00. Next, the witness compared the subject's rental rate with published rates and with the asking rates for five different properties. Based on the above, the witness concluded to a market rent of $15.00 per square foot. Income from parking, miscellaneous and the ground floor office space in the parking garage provided an additional $348,933.

Historical expenses for the building represented 11% of revenues (expenses at 8% and reserves at 3%). The witness indicated that vacancy during the base period ranged from 5.31% in 2014 to 13.92% in 2013. Vacancy was estimated at 10% based on the property's actual history and rates of 13% to 18.38% reported in local publications. Capitalization rates were derived from CoStar comparable sales and information from the RERC Investment survey resulting in a range from 5.5% to 8.9%. The witness applied rates of 6.5%, 7.5% and 8.5% to the net incomes derived by use of both actual and market rents and expenses. From this information, Mr. Mycock concluded to a range of values from $46,358,682 to $60,622,892. Stating the 7.5% capitalization rate to be best for the subject, the witness concluded to a value of $53,000,000 by use of the income approach.

Petitioner's witness concluded to a final value of $53,000,000 for the subject property after giving primary weight to the income approach.

Respondent presented the following indicators of value:

Market:	$73,250,000
Cost:	$62,678,100
Income:	$67,273,500

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser, presented a market approach consisting of four comparable sales ranging in sale price from $56,100,000 to $217,000,000 and in size from 320,341 to 655,565 square feet. After adjustments were made, the sales ranged from $57,665,212 to $78,055,237, representing unit values from $180.01 to $243.66 per square foot.

Mr. Phinney noted various differences between the comparable sales and focused on the NNN rental rate determined for each of the comparable sales. The witness determined a NNN rate of $16.00 per square foot to be appropriate for the subject. Thus, Sale 2, with a reported rate of $16.40 per square foot, was 2% superior to the subject and the price for Sale 2 was then adjusted downward that amount. The same process was applied to Sales 3 and 4 resulting in a downward adjustment of 29% for Sale 3 and an upward adjustment of 17.5% to Sale 4. No other adjustments were applied.

Sale 1, the subject, had no adjustments and was given the most weight. The witness determined a value by the market approach (sales comparison approach) of $73,250,000.

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $62,678,100.

Mr. Phinney considered the assigned value for the subject land and, based on a site-specific analysis, reviewed and analyzed four comparable land sales ranging in sale price from $3,700,000 to $12,000,000. Based on this analysis the witness concluded the assigned land value of $11,335,200 to be supported.

To value the improvements the witness relied upon the approved cost systems and depreciation tables to determine a replacement cost new less depreciation of $51,342,900. In combination with the assigned value for the land the cost approach produced a value of $62,678,100.

Respondent's witness used the income approach to derive a value of $67,273,500 for the subject property. Mr. Phinney considered the rent roll and operating statements that were provided by Petitioner. Based on the current rental contracts, the witness adopted NNN rates of $16.00 per square foot for the 900 S. Broadway building and $16.25 per square foot for the 990 building. The ground floor offices in the parking structure were also considered at $16.00 per square foot. Parking income for 807 spaces was estimated to be $435,780 per year. Vacancy for the office areas was estimated at 10% and at 5% for the parking structure. Operating expenses were estimated to be 10% for the office areas and 30% for the parking structure. Net operating income based on the above assumptions was $4,473,690.

The capitalization rates of the four comparable sales used by Respondent's witness were 5.8%; 6.6%; 6.25% and 8.6% respectively. Mr. Phinney stated he was unable to support the capitalization rate of 5.8% reported for the subject. The witness cited several local sources in concluding to a rate of 6.65%. Capitalization of the net income at that rate resulted in a value of $67,273,500 (rounded) by the use of the income approach.

Mr. Phinney gave least weight to the cost and income approaches choosing to lean most heavily upon the market approach since it includes the sale of the subject property. The witness concluded to a final value of $73,250,000 supporting the assigned value of $64,580,400.

Petitioner contends Respondent is overly swayed by the sale price of the subject. Petitioner's witness (Arceneaux) illustrated the purchase was a "value add" investment strategy anticipating large value improvements in the next six years. Pointing to several recent sales of similar buildings in the market area, Petitioner questions why the assigned value of these properties reflect significant discounts of the sale price whereas, in the case of the subject, no such discount is present. Petitioner argues the subject property has functional problems; mixes single tenant and multi-tenant uses and, in the case of 900 S. Broadway, the building is not only very old at its core it is also a conversion from a heavy industrial structure, hardly the typical Class A office.

Respondent, for its part, dismisses the bulk of Petitioner's argument based on the simple fact of the qualified sale of the subject property at the end of the base period. Respondent questions why Petitioner would pay more than $73 million for a property and come to the County asking the property to be valued at $20 million dollars less. Respondent notes the purchase was financed by a loan from a federally regulated institution requiring an independent appraisal. Respondent also asserts the sales, other than the subject, reported by Mr. Phinney adequately support the value being requested.

Though there is clearly a wide range of opinion between the two parties the Board found there were significant similarities. The following represent those areas where the two contending opinions are proximate:

COMMON:	Petitioner	Respondent	Comment
Gross Building Area	318,054 SF	320,341 SF	Both parties separate the parking structure
Vacancy	10%	10%	
NNN Rent	$15.00/SF	$16.00-16.25/SF	990 Bldg. @ $16.25
Capitalization	6.5%-8.5%	6.65%	7.5% "best"
Cost Approach	Not applied	Applied-given no weight	

The party's had the most significant disagreements in the following areas:

CONTENTION:	Petitioner	Respondent	Comment
Expenses	11 % (includes 8% expenses of which 5% is management plus 3% reserves)	8% (includes 3% reserves)	Petitioner applies 8% expenses and then 3% for reserves.
Parking Income*	$139,150	$289,790	*actual income-unadjusted for expenses
Market Approach	$130/SF-$160/SF	$180.01/SF-$243.66/SF	$228.66 sale price of subject
Income Approach	$53,000,000	$67,273,500	
Best Value Approach	Income	Market	

Based upon the above the Board has adopted the following:

ITEM:	BOARD	Comment
Gross Building Area	319,198 square feet	Average of the two sizes presented
Vacancy	10%	Same rate used by both parties
NNN Rent	$16.00/SF NNN	Market rate
Capitalization	7.5%	6.65% rate is more appropriate for s CBD building
Cost Approach	Not applicable	Same conclusion for both parties
Expenses	5% Management and 3%	No support for 11% combined

	Reserves	expenses and reserves
Parking Income	$124,021 (actual income of $139,150 less 11% for expenses)	No support for $45/mo. rate applied by Respondent

The two parties provided both an income approach and a market (sales comparison) approach. The Board found Petitioner's market approach to be inadequate as no adjustments were made to the comparable sales; the search for the sales was unreasonably narrowed to a 10-mile radius and the transactions reported did not bracket the size of the subject. The Board was also not convinced by Respondent's sales comparison analysis. Two of the sales reported by Respondent were from the Central Business District (CBD) where parking presents a premium. The subject represents an unusual combination of a converted heavy industrial building renovated for single tenant use; a detached multi-tenant office building with reported floorplate and design issues and a third, separate, parking garage with 10,239 square foot of ground floor office leased at $13.00 per square foot until 2022. No attempt was made to consider these factors or the potential influence of TOD development. Respondent relied upon a simple comparison of lease rates to reach a single adjustment covering all property differences and the Board does not believe Respondent's adjustment process satisfactorily considers the relevant issues. Respondent placed greatest weight upon this approach and concluded to the recent sale price of the subject.

The Board found the fewest issues with the income approach. Using the conclusions adopted above the reconstructed income approach is as follows:

Gross Building Area:	319,198 square feet
NNN Lease Rate:	$16.00/Square Foot
Potential Gross Income	$5,107,168
Vacancy Rate:	10%
Effective Gross Income:	$4,596,451
Expenses	5% Management and 3% Reserves
Net Building Income:	$4,228,735
Net Parking Income:	$124,021
Net Operating Income:	$4,352,756
Capitalization Rate:	7.5%
Value Indication:	$58,036,747

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

The Board concludes that the 2015 actual value of the subject property should be reduced to $58,036,747.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to $58,036,747.

The Denver 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 16th day of December, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

Gregg Near

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

Milla Lishchuk

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

68322