

<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>MACY'S DEPARTMENT STORES INC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ADAMS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 75073 &amp; 71797</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on February 4, 2019, Gregg Near and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey Jr., Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2017 and 2018 actual value of the subject property.

The Board consolidated Dockets 75073 and 71797. Mr. Douglass Agne and Ms. Valerie Ferguson were admitted as expert witnesses. Petitioner's Exhibits 1-3, 5 and 9 as well as Respondent's Exhibits A and B were admitted.

Subject property is described as follows:

**14535 Delaware Street, Westminster, Colorado  
Adams County Schedule No. R0174247**

The subject is a 140,075-square foot, freestanding, single-tenant retail department store occupied by the owner. The two-story building was completed in 2007; and is reported in average to above average condition. It is situated on an irregular shaped 8.57-acre site, within the Orchard Town Center mall.

Petitioner is requesting an actual value of \$5,110,000 for the subject property for tax years 2017 and 2018. Respondent assigned a value of \$12,000,000 for the subject property.

Petitioner contends that the subject has functional issues associated with the site shape, building visibility, and two-story design. Petitioner's witness, Douglass Agne, Certified General

Appraiser with Pinnacle Valuation & Consulting LLC, utilized the sales comparison and income approaches to support the requested value of \$5,110,000. Mr. Agne, and Petitioner's second witness, Mr. Scott Brown, Director of Property Tax with Macy's Inc. testified that an Operation, Reciprocal Easement Agreement, with an additional Separate Agreement, severely limited the potential future uses of the subject or redevelopment of the site.

Mr. Agne presented five comparable sales ranging in sale price from \$19.45 to \$33.70 per square foot. All five sales were single-tenant retail buildings that were vacant at the time of sale. After adjustments were made, the sales indicated a value range of \$25.44 to \$38.22 per square foot. With the greatest consideration given to sales 2 and 4, Mr. Agne concluded to a value of \$37.00 per square foot, or \$5,180,000.

Mr. Agne presented an income approach to derive a value of \$4,450,000 for the subject property. A value of the subject "As If Leased" was first developed. A rental rate of \$6.00 per square foot net of all expenses was selected based on an analysis of comparable listings and lease documents. Deductions were taken for vacancy (7.0%), administration expense (1.0%), and non-recoverable expenses (3.0%). A capitalization rate of 8.0% was selected after analysis of comparable sales, a debt coverage ratio analysis, band of investment analysis, and investor surveys. This produced a value of \$9,380,000 for the subject "As If Leased." Mr. Agne then made a deduction of \$4,930,000 to reflect lost income during lease-up of 3 ½ years, tenant improvement allowance, leasing commissions, and entrepreneurial profit. This resulted in a value indication of \$4,450,000 based on the income approach.

Placing 90% of the weight on the sales comparison approach, Mr. Agne concluded to a value of \$5,110,000.

Respondent's witness, Ms. Valerie Ferguson, a Certified Residential Appraiser with the Adams County Assessor's Office, developed the cost, sales comparison, and income approaches to support the assigned value of \$12,000,000.

Ms. Ferguson relied on the state-approved cost estimating service, Marshall and Swift, to derive a market-adjusted cost value for the subject property of \$16,335,452; with land valued at \$10.04 per square foot or \$3,748,856 added to depreciated building costs of \$12,586,596.

Ms. Ferguson analyzed six sales to conclude to a value of \$16,370,565 based on the market approach. After quantitative adjustments were made for market conditions, the sales indicated prices ranging from \$97.38 to \$220.44 per square foot. After qualitative analysis, Ms. Ferguson concluded to a value of \$116.87 per square foot.

A value of \$15,764,384 was indicated by Respondent's income approach. A rental rate of \$10.00 per square foot net of expense was concluded based on the lease data from three comparable retail properties. A deduction was taken for vacancy and collection loss (10.7%), along with a deduction for non-reimbursed landlord expenses (8.0%). A capitalization rate of 7.3% was applied to produce a value of \$15,764,384.

Ms. Ferguson reconciled the three approaches to a value of \$16,000,000, with 60% of the weight given to the cost approach. However, she concluded to a value of \$12,000,000 based on the assigned value.

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. See *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198, 202, 208 (Colo. 2005).

Petitioner contends that the subject has functional issues associated with the site shape, building visibility, and two-story design. However, Petitioner presented insufficient probative evidence to support a direct effect on value. The subject was constructed in 2007 for the specific use of the owner: as a single tenant retail department store. Since construction, the building has been continuously occupied by the owner for the same use as constructed. The Retail Market Analysis contained in Petitioner's Exhibit 1 (pages 22-23) indicates positive real estate trends, with new supply, stable to increasing rental rates, positive absorption, and declining vacancy for both the metro-wide market and the Northwest Submarket. The Board was not convinced that the building suffered from physical, functional or external obsolescence that would cause the building to be vacant if it were sold on the open market; nor was an alternate highest and best use indicated. Although the Operation, Reciprocal Easement Agreement and Separate Agreement, place some limits on the potential uses of the subject or future redevelopment of the site (i.e. uses such as multi-family residential, hotel, health club are not permitted); there was no evidence to suggest the intended use as a department store would no longer be allowed.

After consideration of all three approaches, Mr. Agne relied primarily on the sales comparison approach; with limited consideration given to the income approach. Petitioner relied on sales of vacant retail properties in the sales comparison approach. However, the subject's location and building condition are supportive of continued occupancy, with no compelling evidence presented to the contrary. The Board was not persuaded that sales of vacant buildings in the sales comparison approach was consistent with highest and best use.

Mr. Agne also analyzed the subject as vacant in the income approach. The deduction of over 50% of the value "As If Leased" (for lost income during a 3 ½ year lease-up period, tenant improvement allowance, leasing commissions, and profit) in the income approach was also not consistent with the concluded highest and best use as an owner-occupied building.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 2017 and 2018.

**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).

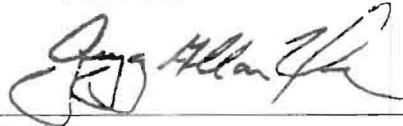
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 8th day of March, 2019.

**BOARD OF ASSESSMENT APPEALS**



Gregg Near



Sondra W. Mercier



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



Milla Lishchuk