

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 71848

Petitioner:

EVERGREEN INDUSTRIAL PARK, LLC,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 22, 2019, Diane M. DeVries and Samuel M. Forsyth, presiding. Petitioner was represented by Jordan C. May, Esq. Respondent was represented by Jason W. Soronson, Esq. Petitioner is protesting the 2017 valuation of the subject property.

Petitioner's Exhibits 1-6 and Rebuttal 7 as well as Respondent's Exhibit A and Rebuttal B were admitted into evidence.

Subject property is described as follows:

**30706 Bryant Drive
Evergreen, CO 80439
Jefferson County Schedule Number 300424283**

Petitioner presented the following indicators of value:

Market:	\$2,070,000
Cost:	\$2,050,000
Income:	\$2,045,000

Petitioner is requesting an actual value of \$2,050,000 for the subject property for tax year 2017. Respondent provided an appraisal concluding to a value of \$2,960,000 which supports the assigned value of \$2,548,800 for the subject property for tax year 2017.

The subject is a flex warehouse/office facility consisting of 25,402 square feet. The structure was built in 1998 with an effective year built of 1999. There are 11 rentable units ranging in lease space from 800 square feet to 4,576 square feet. The average size of the units is 2,309 square feet. The heat is suspended gas-fired space heaters in ceiling and electric baseboard. The construction is metal frame with wood siding. There is a wet sprinkling system. The subject is located in Evergreen off Evergreen Parkway, south of I-70.

Petitioner called its first witness, Judith L. Mitchell, MAI, who presented a Retroactive Appraisal Report. Petitioner's appraiser testified that the owner of the property did not use a professional management company. She testified that the owner did not exercise all the rights inherent in the leases such as escalators, reimbursements or adjustments to market rates at lease renewal time. The owner stated to the appraiser that he would rather forego income and exercising the rights of the landlord on the leases than risk vacancy and loss of rental income.

Petitioner presented 11 comparable sales ranging in sale price from \$500,000 to \$1,985,000 and in size from 5,264 to 30,000 square feet.

- 2 of the 11 sales had a date of construction in the 1960's, 5 of the sales were constructed in the 1970's, and 3 constructed in the 1980's. One of the sales was constructed in 2000. The average date of construction of the comparables is 1978.
- 3 of the sales are 15 to 19 miles away from the subject, 4 of the sales are 20 to 25 miles from the subject, 3 of the sales are more than 25 miles from the subject. One of the sales is .2 miles away from the subject. The average distance of the sales from the subject is 20 miles.
- The unadjusted sale price per square foot of the 11 comparable sales ranges from \$61.00 to \$113.00 per square foot. The average unadjusted sale price per square foot is \$78.00.
- The Petitioner adjusted all of the sales .56% per month to account for the change in the market conditions from the date of sale to the level of value.
- Adjustments were also made for construction, sprinkler system, and building size.

Petitioner stated that the value by the sales price per square foot of building was \$1,980,000; and by the sales price per square foot of land the value was \$2,175,000. With consideration given to both, a value of \$2,070,000 was concluded via the sales comparison approach.

Petitioner presented a replacement cost new approach. Petitioner identified 9 vacant land sales ranging in size from 34,339 square feet to 309,273 square feet. The sale prices ranged from \$110,000 to \$900,000. The time adjusted sale prices per square foot ranged from \$1.20 to \$7.73. Petitioner reconciled to \$2.25 per square foot or \$144,075. A state approved cost system was used to value the improvements, after depreciation of 28% at \$1,802,000, for a total of \$1,946,257. During testimony, Petitioner discovered some factor errors and adjusted the value based on the replacement cost approach at \$2,050,000.

Petitioner presented an income approach utilizing the income capitalization method. Petitioner presented a rent rate study of competitive properties to arrive at a market rate for the subject. The rental comparables are all proximate to the subject. The exact locations were not revealed in order to preserve confidentiality. Petitioner also took into account the historical rental

rate and vacancy performance of the subject property. Petitioner reconciled to a blended (actual rents and anticipated rent of vacant space) rental rate of \$9.83 per square foot. A 10% stabilized vacancy and 21.1% expense rate was applied to the Gross Operating Income to arrive at a Net Operating Income of \$163,600. To determine an overall capitalization rate, Petitioner presented 11 sales. 5 of the sales reported capitalization rates at time of sale. All of the comparables were east of the subject in the Denver metro area. The range of cap rates was 5.13% to 7.8%. Taking into account the risk factors of the subject and unresolved water leakage issues, Petitioner concluded to an overall rate of 8% and a value based on the income approach of \$2,045,000.

Petitioner next called Wendell Huggins who is the owner of the subject property. Mr. Huggins testified that he developed the subject property in 1999-2000. He said there is a drainage from the slope to the west and from the properties to the south. During wet months of the year, poor drainage results in standing water adjacent to the subject structure with water seeping into some of the units. The owner also stated that the water damaged the road base around the structure. No estimates of cost to cure of the draining issues were provided. Mr. Huggins testified that he did not believe the draining issues had a negative effect on demand or rent rate. Mr. Huggins stated that he believed his management of the units maximized the occupancy of the property. Mr. Huggins disputed that he does not advertise vacancies when units become available. He stated that he associates regularly with local brokers, whom he said are very familiar with the subject property and informs them when spaces are available to rent. Mr. Huggins stated that if he tried to enforce the NNN components of the leases or assessed market rents when leases are up for renewal, he would lose tenants and have difficulty replacing them. He stated he has considered hiring a professional 3rd party management company but does not believe the expense justifies the benefit.

Respondent presented the following indicators of value:

Market:	n/a
Cost:	n/a
Income:	\$2,960,000

Respondent's expert, Joel Cuthbert, Certified General Appraiser who is an employee of the Jefferson County Assessor's Office, presented an Appraisal Report. Respondent concluded to an actual value of \$2,960,000 to the subject property for tax year 2017 based solely on the income approach. Respondent stated that the replacement cost approach was considered but a value was not developed because there is a lack of available vacant land sales. Respondent also stated that because of the building's age it is difficult to determine accrued depreciation for the improvements. Similarly, the sales comparison approach was considered but a value was not developed because there are very few sales of multi-tenant industrial properties in the Evergreen area.

Respondent did not provide a rent study of competitive properties in the area. Respondent merely stated that "...According to other industrial tenants in the area, the NNN rental rate ranges from \$8.50 to \$12.50 per square foot..." Respondent relied on this and the actual rental data for the subject property to conclude to a stabilized rental rate of \$10.00 per square foot. Respondent stated that the demand is very high for the space of this type in the market and supply is very limited. Respondent also stated that stabilized rental terms in this market are pure NNN with the tenant

typically paying for all expenses except replacement reserves and some miscellaneous expenses. Respondent concluded to a stabilized vacancy rate of 5% and expenses at 5%. To determine an overall capitalization rate, Respondent relied on market surveys provided by the Burbach Survey and PwC in addition to "...interviews of appraisers and brokers familiar in the West submarket and in the Evergreen area." Respondent concluded to an overall capitalization rate of 7.75% resulting in a value for the income capitalization method of \$2,960,000.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect. The Board agrees that the sales comparison and cost approaches to value are not determinative to establish value for the subject. The comparable land sales in the cost approach and the comparable improvement sales in the sales comparison approach were all an average of 20 miles east of the subject property. Almost all were located in the west Denver metro market. Evidence and testimony clearly reflected that the subject was unique in character and in a location where there were limited competitive properties. The Board concludes that the income capitalization approach is the most compelling in determining the market value of the subject.

Overall the Board finds Petitioner’s market rental study of competitive properties and capitalization rate analysis more compelling. The Board finds Respondent’s market-based support for rental rates of competitive properties and capitalization rate to be insufficient and incomplete. The Board is convinced that the condition, character and location of the subject property would result in modified NNN leases, not pure NNN leases. The Board is convinced that the actual expenses stated in Respondent’s expense conclusion are unfounded because the subject property lacks responsible ownership and competent management. The Board concludes to a modified NNN rate of \$9.80 per square foot, a stabilized vacancy of 10%, stabilized expense rate of 17%, and overall capitalization rate of 8%.

Square feet	rental rate		
25,402	\$ 9.80	\$248,940	PGI
		10%	Vacancy Rate
		\$224,046	EGI
		17%	Expense Rate
		\$ 185,958	NOI
		8%	OAR
		\$ 2,324,500	value (rounded)

Respondent is ordered to reduce the 2017 actual value of the subject property to \$2,324,500.

The Jefferson 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).

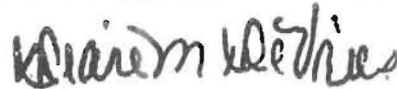
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 March, 2019.

BOARD OF ASSESSMENT APPEALS

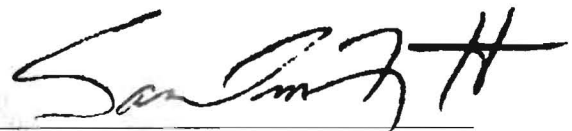


Diane M. DeVries

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



Milla Lishchuk



Samuel M. Forsyth

