BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **JOHNS MANVILLE,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 71911**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 20, 2018, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Thomas E. Downey, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner's Exhibit 1 and Addendum, Respondent's Exhibits A, B1 and B2 were admitted into evidence.

Subject property is described as follows:

10100 West Ute Avenue
Unincorporated Jefferson County
Jefferson County Tax ID No. 300038579

The following is a breakdown of the improved structures under appeal as presented by Petitioner:

Design	Construction Class: Materials	Year Built	Gross Area/SF
Office Building	A: Fireproof Structure Steel Frame	1973	105,466
Office Building	A: Fireproof Structure Steel Frame	1973	11,826
Industrial Flex Bldg.	C: Masonry or Concrete Load-Bearing Walls	1973	71,415
Office Building	A: Fireproof Structure Steel Frame	1973	33,607

Office Building	A: Fireproof Structure Steel Frame	1979	39,158
Industrial, Light Manufacturing	C: Masonry or Concrete Load-Bearing Walls	1979	27,648
Industrial Flex Bldg.	C: Masonry or Concrete Load-Bearing Walls	1979	4,150
Office Building	A: Fireproof Structure Steel Frame	1979	861
Warehouse, Storage	S: Metal Frame w/Metal Siding	1996	12,000
		Total:	306,131

Evidence Presented to the Board

Petitioner presented the following indicators of value:

Market:	$15,280,000
Cost:	$12,130,000
Income:	$15,570,000

Petitioner is requesting an actual value of $16,000,000 for the subject property for tax year 2017. Respondent assigned a value of $24,918,701 for the subject property for tax year 2017 supported by an appraisal for $28,000,000.

Petitioner presented as the first witness, Mr. Michael Moochler, the Facilities Manager for the subject buildings. Mr. Moochler testified to 35 years of employment with Johns Manville and to the condition of the buildings as of the date of valuation. The witness described the historic use of the subject for manufacture of asbestos. Mr. Moochler stated the facility was in disrepair and summarized the needed repairs for the building improvements. Mr. Moochler testified that the ownership's planned repairs and renovations were anticipated to be completed in a series of three phases. As of the date of value phase, 1 had not started.

Petitioner's next witness, William M. James, a Certified General Appraiser, presented a sales comparison approach reporting seven comparable sales ranging in sale price from $6,900,000 to $15,500,000 and in size from 153,000 to 427,517 square feet. After adjustments were made, the sales ranged in unit value from $30.75 to $51.98 per square foot of building area.

Mr. James adjusted the comparable sales for market conditions, age/condition and parking ratio/land-to-building ratio. After all adjustments were applied, the witness indicated the unit values were concentrated in the $40.00 to $45.00 range. The weighted average value of the comparable sales of $43.05 per square foot of building area was adopted. Application of the unit value to the gross square footage of the subject produced a value indication of $13,178,940. Excess land was added to the indication to derive a value by the sales comparison approach of $15,279,640 or $15,280,000, rounded.

Mr. James presented a cost approach to derive a market-adjusted cost value for the subject property of $12,130,000.

The Board allowed testimony from Petitioner's witness regarding discovery of an error to the calculations within the cost approach resulting in a corrected value of $15,760,000.

Land value was determined by analysis of five comparable land sales ranging from 34 to 1,270 acres with unit values ranging from $0.50 to $3.27 per square foot of land area. Adjustments were applied for market conditions, location and for raw land lacking utilities. After adjustment the witness concluded to a range of unit values from $0.53 to $2.67 per square foot of land and from $3.18 to $15.99 per square foot of buildable land. Mr. James applied a unit value of $1.22 per square foot of raw land to the appropriate site area for the improvements of 3,597,844 square feet for a value indication of $4,389,369 ($4,390,000, rounded). The witness applied the same unit value to the excess land of 1,721,886 square feet for a value indication of $2,100,700 ($2,100,000, rounded). Total land value as determined by this analysis was $6,490,069.

To determine the contributory value of the improvements the witness relied upon the replacement cost derived by use of the Marshall Valuation Cost Handbook. Mr. James concluded to an overall building cost new of $18,808,187. Depreciation of 70% of cost new was applied concluding to a depreciated cost of the improvements of $5,642,187. Land value of $6,490,069 was added to the depreciated cost to produce a value by the cost approach of $12,132,256 ($12,130,000). The witness determined the value by the cost approach to be $15,760,000.

Mr. James presented an income approach to derive a value of $15,570,000 for the subject property.

Mr. James presented ten recent comparable rents ranging from $3.50 to $6.25 per square foot on a triple net basis (NNN) for areas from 31,185 to 352,094 square feet. Adjustments were applied for age/condition and land to building ratios to determine adjusted rental rates from $3.47 to $5.31 per square foot. All the adjusted rents were weighted equally and the witness concluded to an average rental rate of $4.14 per square foot. The witness indicated no adjustment for vacancy to be appropriate and applied the rental rate to the subject's building area to derive an effective gross income (EGI) of $1,267,382.

Expenses appropriate for a NNN lease were applied as 7% of EGI to derive an opinion of $1,160,236 for net operating income (NOI). To apply a direct capitalization rate, Mr. James referenced rates from three of the building sales used in the sales comparison approach and other local transactions indicating a range from 5.5% to 9.98%. Additional support was provided by published sources, mortgage equity analysis, a debt coverage ratio and the corporate credit rating for the tenant. Capitalization rates determined from the above ranged from 5% to 8.62% for a range of 6.5% to 7.25%. The witness cited the age of the building, the excess land and perceived risks of national trends to adopt a rate of 7.5%.

Capitalization of the NOI by a 7.5% rate provided a preliminary value indication of $15,469,820. The value of the excess land added to the above resulted in a total value of $17,570,520 ($17,570,000, rounded).

The witness considered all three approaches in his reconciliation. Mr. James gave least weight to the cost approach and equal weight to the income and sales comparison approaches to conclude to a final value of $16,000,000.

Respondent presented the following indicators of value:

Market:	$29,080,000
Cost:	$27,075,000
Income:	$28,960,000

Respondent's witness Robert D. Sayer, a Certified General Appraiser, presented a market approach consisting of five comparable sales ranging in sale price from $13,400,000 to $20,500,000 and in size from 101,130 to 206,645 square feet. After adjustments were made, the sales ranged in unit value from $83.94 to $126.11 per square foot of building area.

Mr. Sayer adjusted the comparable sales for lot size, building size, year of construction and for multi-tenant occupancy. The witness concluded to a unit value of $95.00 per square foot and applied this to the building size of 306,131 square feet to determine a value by the sales comparison approach of $29,082,445 ($29,080,000, rounded).

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $27,075,000.

Land value was determined by analysis of four comparable land sales ranging from 1,501,949 to 4,356,000 square feet with unit values ranging from $2.70 to $4.97 per square foot of land area. Qualitative adjustments were applied for lot size, location and for corner lot compared to an interior lot. After adjustment, the witness concluded to a range of unit values from more than $2.70 to less than $4.97 per square foot of land. Mr. Sayer applied a unit value of $3.00 per square foot of land to the site area of 2,595,697 square feet for a value indication of $7,787,091 ($7,785,000, rounded).

To determine the contributory value of the improvements the witness relied upon the replacement cost derived by use of the Marshall Valuation Cost Handbook. Mr. Sayer considered the features of nine separate types of structures comprising the total building area to derive an overall cost new of $45,238,048. Depreciation from all causes was estimated to be $25,947,186 resulting in a depreciated value of $19,290,858. Mr. Sayer added $582,524 for "extra features" and land value of $4,469,953 for a total value by the cost approach of $24,343,335.

Respondent's witness used the income approach to derive a value of $28,960,000 for the subject property.

Mr. Sayer presented five recent comparable rents ranging from $6.77 to $12.50 per square foot on a NNN basis for areas from 81,913 to 206,645 square feet. Qualitative adjustments were applied for market conditions, building size, location, year of construction and design to determine adjusted rental rates from less than $6.77 to less than $12.50 per square foot. After analysis of the comparables the witness concluded to a rental rate of $7.50 per square foot. Mr. Sayer applied the rental rate to the subject's building area to derive a potential gross income (PGI) of $2,295,983. Application of an 11% vacancy rate determined an EGI of $2,043,424.

Total expenses of $163,474 were estimated and applied to the EGI to derive an opinion of $1,879,950 for NOI. Mr. Sayer estimated a capitalization rate referencing the rates derived from the comparable sales, published sources and extracted rates determined through the County's data base of 7.5%.

Capitalization of the NOI by a 7.5% rate provided a preliminary value indication of $25,066,000. The value of excess land was added to the above resulting in a value of $28,959,546 for the subject via the income approach or $28,960,000, rounded.

Mr. Sayer applied greatest consideration to the cost approach to conclude to a final value of $28,000,000 for the subject property for tax year 2017.

The Board's Findings

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson,* 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board found insufficient confidence in Petitioner's appraisal as a whole. A primary factor in this finding was the testimony of Mr. James that an associate performed from 60% to 70% of the development of Petitioner's appraisal report. The Board was particularly concerned by the testimony of the witness that the associate in question had been with the firm for only 18 months, had no appraisal license and no prior appraisal experience.

The Board finds, in review of Petitioner's evidence and testimony, significant errors in fact and in analysis. Petitioner's witness attempted to offer a corrected analysis for the cost approach on the day of the hearing. The Board did not accept the corrected analysis due to the late submittal. A corrected conclusion was offered by testimony from Petitioner's witness but the Board found this method of presentation of new evidence to be ineffective for the Board's use.

The Board was not swayed by Petitioner's comparable sales. The witness described the subject as "Office industrial" with 62% office. CoStar data provided by Respondent describes the majority of the Petitioner's comparables to have been industrial warehouse structures designed and utilized for distribution. The Board found little confidence in the sales analysis because information provided by Respondent from the CoStar data service describes the majority of the comparables to have been industrial warehouse structures designed and utilized for distribution.

Respondent's exhibit B1, pages 19, 24 and 32 illustrated Petitioner's sales to have been significantly misrepresented. In addition, Petitioner's data sheets for the sales suggest the confirmations were completed by the named assistant and others who were not disclosed.

The Board was not convinced that Petitioner's land sales were reasonably comparable to the subject nor were they adjusted in an appropriate manner. All of Petitioner's land sales were of raw land without utilities or entitlement for uses such as the subject; in fact, the majority of the sales were reported as intended for residential development.

For these and other errors and misstatements in Petitioner's appraisal the Board finds it has little confidence in Petitioner's value estimate.

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

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 20th day of December, 2018.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Gregg Near

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

Milla Lishchuk