

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>REDART, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 71918</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 15, 2018, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The parties agreed to the admission of Petitioner’s Exhibit 1 and Respondent’s Exhibits A and B. The parties also stipulated to the admission of their respective witnesses as experts for this hearing.

Subject property is described as follows:

**5395 S. Wadsworth Boulevard, Littleton, Colorado
Jefferson County Schedule No. 300406702**

The subject property includes a 46,282 square foot free-standing box retail building constructed in 1990 on a 4.835-acre site. The property is at the northwest corner of Wadsworth Boulevard and Crestline Avenue within a concentration of retail and restaurant uses flanking the Wadsworth Boulevard arterial. The building is leased and occupied by Best Buy. Only partial lease information was provided; the lease was dated February 27, 2006 and has a 15-year term. Information about potential lease extensions was not provided.

Petitioner is requesting an actual value of \$6,500,000 for the subject property for tax year 2017. Respondent assigned a value of \$7,999,013 for the subject property for tax year 2017.

Petitioner contends Respondent overvalued the property by analyzing the leased fee value not the fee simple value as is required for ad valorem analysis. Petitioner further claims Respondent relied heavily on the 2013 sale of the subject property, which represented a leased fee sale. Respondent contends the contract rent as of the date of value was at market. Therefore, the leased fee value was equal to the fee simple value.

Petitioner's Evidence

Petitioner presented the following indicators of value:

Cost:	Not Used
Market:	\$6,480,000
Income:	\$6,500,000

Petitioner presented Mr. Christopher N. Baker, MAI, of Newmark Knight Frank, as witness. In addition to holding the MAI designation from the Appraisal Institute, the witness has a Certified General Appraiser credential in the State of Colorado. The witness presented an independent appraisal of the subject property using the market and income approaches to value. The witness testified he would classify the subject property as a mid-size box retail building.

Petitioner's witness presented seven comparable sales ranging in price from \$2,200,000 to \$18,705,000 and in size from 17,979 to 87,880 square feet of leasable area. The indicated prices per square foot ranged from \$108.45 to \$212.85. Petitioner's witness testified that Sale 6 is the April 2013 sale of the subject property for \$7,300,000, equivalent to \$157.73 per square foot. However, it represents the sale of the leased fee interest in the property subject to the existing lease, not the fee simple interest. In the witness's opinion, the contract rent as of the effective date of value was above market; it was executed in 2006 near the top of the market compared to a more normalized market as of the date of value in 2016. Therefore, it was necessary to adjust that sale downward to reflect the fee simple market rent as of the date of value. After adjustments for property rights conveyed, changing market conditions, and a variety of physical characteristics, the sales indicated a range of values of \$122.92 to \$165.82 per square foot. The witness testified he gave most weight to Sales 2 and 6 and concluded to a value of \$140.00 per square foot for the subject property, resulting in a rounded value for the property by the market approach of \$6,480,000.

Petitioner's witness presented an income approach using seven rent comparable leases ranging in size from 17,363 to 42,485 square feet. The lease rates ranged from \$9.50 to \$16.37 per square foot. After considering adjustments to each lease, the witness concluded to a market rent for the subject property of \$12.00 per square foot. The witness applied a 7% vacancy and collection loss rate, 3% management fee expense, and \$0.30 per square foot for replacement reserves. The witness considered capitalization rates for the comparable sales used as well as published national rate survey indicators for neighborhood retail, community retail centers, strip shopping centers, power centers, and a survey for an unidentified type of national retail. The witness applied a 7.5% capitalization rate to his net operating income estimate to derive a rounded value of \$6,500,000 for the subject property.

Petitioner's witness testified he considered the indicated values for both the sales and market approaches to value and concluded to a final value for the subject property of \$6,500,000.

Respondent's Evidence

Respondent presented the following indicators of value:

Cost:	\$8,459,885
Market:	\$8,330,760
Income:	\$8,265,965

Respondent presented Mr. Michael H. Earley, MAI, SRA, of the Jefferson County Assessor's Office, as witness. In addition to holding the MAI and SRA designations from the Appraisal Institute, the witness has a Certified General Appraiser credential in the State of Colorado. The witness presented an appraisal of the subject property using the cost, market, and income approaches to value.

The witness presented evidence that the Assessor's records show the subject building is 46,282 square feet in size, which differs from the lease that shows a rentable area of 45,976 square feet. Petitioner has not claimed or provided any documentation to indicate an improvement area significantly different from what has been considered for tax purposes over past years. The witness used 46,282 square feet for his appraisal. The Board notes that Petitioner's witness also used 46,282 square feet.

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property. To estimate land value, the witness presented 8 land sales that occurred within the full applicable five year extended base period. The witness concluded to a value by the cost approach of \$8,459,885.

After considering testimony from both parties concerning differences in their conclusions of the effective age of the improvements, which were approximately 26 years old as of the date of value, the Board finds that it is difficult to accurately estimate the significant amount of applicable depreciation from all relevant sources for a property this age. Further, the Board finds the necessity to use land sales dating back five years reduces the reliability of the land value estimate. The Board concludes these factors significantly reduce the reliability of the cost approach to value for this particular property and have given it no further consideration relative to the value of the subject property.

Respondent's witness presented 7 comparable sales, including the 2013 sale of the subject property, ranging in price from \$3,450,000 to \$11,210,000 and in size from 33,138 to 51,743 square feet. The indicated prices per square foot ranged from \$73.00 to \$326.00. The witness testified he confirmed the sale of the subject with the buyer, with Petitioner's attorney, Mr. Thomas Downey, with the TD1000 declaration filed with the county by the buyer, and with the CoStar real estate transaction data service. The witness testified he reviewed a third party appraisal prepared for the subject property at the time of the sale which concluded that the leased fee interest was the same as

the fee simple interest. Based on this information and his own analysis of market rents at the time of sale, the witness also concluded that the leased fee interest at the time of sale was equal to the fee simple interest, so no adjustment was required to the sale of the subject for property rights conveyed. The witness made qualitative (plus or minus) adjustments to the sales, then grouped the sales based on the overall qualitative ratings of inferior, similar, and superior to the subject property. Only one sale was considered superior; five sales were considered inferior. Using bracketing of the five inferior sales and the one similar sale, the mean unit value was \$188 per square foot. The 2013 sale of the subject property was included in that group and indicated a value of \$158 per square foot. The bracketed mean value of the similar sale and the one superior sale was \$272 per square foot. Giving most weight to the larger group of lower priced sales, the witness concluded to a value for the subject of \$180.00 per square foot, and a total value of \$8,330,760 using the market approach. The witness testified that the value conclusion is higher than the 2013 sale price of the subject, which should be adjusted upward for improving market conditions since that sale occurred.

Respondent's witness presented an income approach to derive a value of \$8,265,965 for the subject property. The witness presented seven comparable lease rates for actual leases in or immediately prior to the base period. The leases included the subject property and ranged in size from 33,138 to 51,743 square feet and the rents ranged from \$14.55 to \$24.00 per square foot. Within that range, the subject's lease rent was \$16.74 per square foot. Because the lease information was taken from the Assessor's files and the witness is bound by confidentiality requirements, the city where each property is located was identified, but the addresses of the properties were not provided. The witness also considered the CoStar reported rents for big box retail properties of \$12.75 to \$27.14 per square foot. The witness concluded to a market rent of \$16.00 per square for the subject. The witness applied a 5% vacancy and collection loss rate based on the vacancy reported by CoStar for the end of the base period for similar big box retail properties. An expense rate of 6% was applied including a management fee and replacement reserves. For the capitalization rate, the witness considered the rates for big box retail reported by the Burbach survey for the Denver metropolitan area and the rates indicated by the comparable sales analyzed. Applying a capitalization rate of 8.0% to the estimated net income for the subject property, the witness concluded to a value by the income approach of \$8,265,965.

The witness testified that he gave more weight to the values indicated by the market and income approaches and some weight to the cost approach. The reconciled initial value conclusion was \$8,300,000. From that figure, the witness deducted \$300,000 for deferred maintenance reported by Petitioner. The deduction was based on the higher cost to replace the affected items rather than estimated repair costs. After the deferred maintenance deduction, the witness concluded to a final value for the subject of \$8,000,000.

Respondent assigned an actual value of \$7,999,013 to the subject property for tax year 2017.

Board's Findings

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

The Board finds Petitioner's witness provided insufficient information to support the percentage adjustments made, such as the property rights conveyed adjustment for leased fee estates made to five of the sales. The Board agrees it would be appropriate to make an adjustment to the leased fee sales if the in-place rents are below or above market. If the rents were at market at the time of sale, no adjustment would be required. However, the witness did not provide rent information for most of the sales or analysis to convince the Board that adjustment amounts are reasonable and supported. The adjustments made are all downward, reducing the value conclusion.

Petitioner's witness testified the changing market conditions adjustment used was 3% per year based on inflation and presented some limited change in Consumer Price Index (CPI) information as well as national investor survey historical forecasts for changes in retail property values as support. The witness testified values go up and down based on CPI. The Board disagrees. The Board finds that CPI is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. CPI factors do not represent changing market conditions specific to real estate, or more particularly for a retail property such as the subject in the subject's location. An analysis of changes to the sale prices of similar retail properties in this market during the base period (if any) would have been appropriate. The Board concludes that basing the changing market conditions adjustments on CPI is not a credible reflection of the retail property market for this location.

The Board finds there was insufficient rent data provided to persuade the Board that only nominal adjustments to three of the sales for differences in rentable size were supported. Sale 2 is 90% larger than the subject and was adjusted upward 5% for that difference. Sales 3 and 7 are 61% and 58% smaller than the subject building, respectively, and were adjusted down 5%. All other things considered equal, rent per square foot is typically lower for larger rentable areas and higher for smaller spaces. Respondent's witness concurred with that relationship. The Board finds there are no fixed size points at which these changes in rent occur. Petitioner's witness did not provide any analysis to support the adjustments made. In the absence of that analysis, the Board is not persuaded that the properties with large size differences relative to the subject property are truly comparable or that the adjustments applied are reasonable. Further, the Board finds that Sale 7 sold to a buyer planning to convert the retail space to medical office use. The Board concludes that the change in use could have had a significant impact on the price the buyer was willing to pay for the property.

The Board finds Petitioner relied on published market statistics representing all types of retail properties and although it does provide some useful trend information, Respondent's use of market statistics for big box properties is more persuasive.

After considering all the evidence, the Board concludes Petitioner did not meet its burden to prove the subject property was valued incorrectly. The Board concludes Petitioner's appraisal analysis had insufficient support to persuade the Board it produced more credible results, requiring the Board to accept too many factors on blind faith. Petitioner is not required to prove a value but does have the burden to convince the Board that Respondent's value is not reasonable, and the Board concludes that Petitioner's evidence on that issue is not more credible.

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).

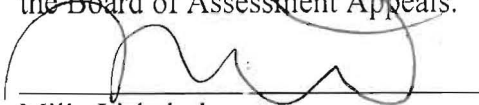
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 4th day of September, 2018.

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



Milla Lishchuk

BOARD OF ASSESSMENT APPEALS



Debra A. Baumbach



Louesa Maricle