

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>70 EXECUTIVE CENTER,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 72099</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 16, 2018, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Barry Arrington, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Subject property is described as follows:

**4891 Independence Street, Wheat Ridge, Colorado 80033
Jefferson County Schedule No. 300081028**

The subject is a 44,796-square foot (gross building area) multi-tenant office building constructed in 1981. The building is situated on a 2.84-acre site.

Petitioner is requesting an actual value of \$2,450,000 for the subject property for tax year 2017. Respondent assigned a value of \$3,004,000 for the subject property for tax year 2017.

Petitioner's witness, Mr. David G. Berger, tax agent with RH Jacobson & Company, applied the sales comparison and income approaches to support a value of \$2,450,000.

Petitioner presented four comparable sales located in Jefferson County. After qualitative adjustment, Mr. Berger concluded to a range of \$55.00 to \$57.00 per square foot (gross area) or \$58.00 to \$60.00 per square foot (net rentable area) to conclude to a range in value of \$2,416,280 to \$2,553,375 based on the sales comparison approach.

Petitioner presented an income approach to derive a value of \$2,400,000 for the subject property. Using discounted cash flow analysis and the actual income and expenses from the subject, Mr. Berger calculated value of \$2,260,000. A direct capitalization analysis based on market data produced a fee simple value of \$2,550,000. Market factors used included rent of \$15.00 per square foot, vacancy of 15.0%, and an expense deduction of \$6.25 per square foot. A capitalization rate of 8.0% was concluded, with 2.62% added to reflect the effective tax rate. The two approaches were reconciled to a value of \$2,400,000 within the income approach.

Mr. Berger testified to high vacancy within the subject, shown to average just under 30% over the extended base period. The subject's location and the general economics of the area were cited as the cause of the high vacancy.

Respondent's witness, Mr. Robert D. Sayer, Colorado Certified General Appraiser with the Jefferson County Assessor's office, applied the sales comparison and income approaches to conclude to a value of \$3,192,500 within an Appraisal Report.

Mr. Sayer presented six comparable sales located in Jefferson and southwestern-Denver Counties. After qualitative adjustments were made, the sales indicated a range above \$59.28 but below \$91.46 per square foot. Respondent concluded to a value of \$75.00 per square foot or \$3,360,000 based on the sales comparison approach.

Respondent used direct capitalization in the income approach to derive a value of \$3,025,000 for the subject property. Factors applied included a gross rental rate of \$15.00 per square foot, vacancy of 11.0%, and expenses estimated at 40% of effective gross income, equal to \$5.34 per square foot (excluding taxes). A capitalization rate of 8.0% was adjusted to 10.62% to reflect taxes. These factors produced a value of \$3,113,341. Mr. Sayer then made a deduction of \$88,167 to reflect lease-up costs to bring the subject to stabilized occupancy, to conclude to a value of \$3,025,000.

Respondent assigned an actual value of \$3,004,000 to the subject property for tax year 2017.

The Board finds that Mr. Berger's agency and contingency fee arrangement was clearly disclosed to the Board. Taking into consideration the nature of Mr. Berger's compensation, the Board regards the Property Valuation Analysis as a consulting service, not as an independent appraisal. In analyzing this case, the Board weighs the evidence provided by Mr. Berger in light of the disclosed bias shown by the contingency fee arrangement.

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. A taxpayer who meets the burden of demonstrating that an assessment is incorrect need not also show an alternative valuation under the market approach to prevail. *Reiber v. Park Cnty. Bd. Of Equal.*, 14CA6 (Colo. App. 2014).

The cost approach was considered by both parties, but not deemed a reliable indicator based upon the subjectivity of determining accrued depreciation. The subject is a multi-tenant office

building. Both parties produced sales comparison and income approaches with a significant overlap in factors used by the parties in completing the income approach, including: rental rate of \$15.00 per square foot, and a capitalization rate of 8.0%, inflated to 10.62% to reflect the effective tax rate.

Respondent's vacancy rate of 11.0% was based on market data for the Northwest Denver office market. Petitioner applied a slightly higher rate of 15.0%, comparable to the vacancy rate indicated for Class B office space in Jefferson County which is well below the subject's actual historical vacancy of near 30.0%. The Board finds Petitioner's vacancy rate of 15% for the subject to be more indicative of Jefferson County's Class B market.

Another primary difference between the parties' income approaches was reflected in their respective deduction for expenses. Respondent's 40.0% expense deduction was based on BOMA survey information for the Denver market area. Alternately, Petitioner's deduction of \$6.25 per square foot was based on data from comparable properties, which indicated an average of \$6.56 and a median of \$6.05 per square foot.

After consideration of all three approaches to value, the Board finds that the income approach provides the most reliable indication of value for the subject, which is a multi-tenant office building. Section 39-1-106, C.R.S., "requires that the fee simple interest in property be valued for property tax purposes. The valuation process should reflect a market value, using market assumptions, including market rent, market expenses, and market occupancy". *ARL*, Vol. 3, Pg. 7.11. The Board disregards Petitioner's discounted cash flow analysis based on the subject's actual operation (leased fee interest). Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect. The Board was convinced that Petitioner's market-based income approach provided credible evidence as to the value of the subject of \$2,550,000.

Alternately, the sales comparison approach provides a reliable test of reasonableness to the \$2,550,000 value indicated by the income approach. Ultimately, the parties produced some overlap in range of value, both based on a qualitative approach. Petitioner's sales indicated a value greater than \$56.20 but below \$68.30 per square foot. Respondent's analysis indicated a value above \$59.28 but below \$91.46 per square foot. The concluded value is supported by the lower end of the range.

The Board concludes that the 2017 actual value of the subject property should be reduced to \$2,550,000.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$2,550,000.

The Jefferson County Assessor is directed to change their 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).

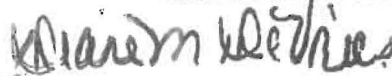
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

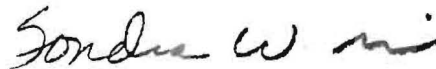
Section 39-8-108(2), C.R.S.

DATED and MAILED this 31st day of August, 2018.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



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