

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JERRY WRENCH AND DOT-SAL INC. PARTNERSHIP NO. 1</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 73780</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 25, 2019, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Carla Martin, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The Board admitted Petitioner’s Exhibits 1-5 and Respondent’s Exhibit A into the evidence.

Subject property is described as follows:

**2702 E 3rd Avenue
Denver, Colorado
Denver County Schedule No. 05122-21-002-000**

Petitioner is requesting an actual value of \$2,900,000 for the subject property for tax year 2017. Respondent assigned a value of \$4,375,000 for tax year 2017.

The subject property is a 25,542 square foot building containing a net rentable area of 19,326 square feet. The building is located on a 16,700 square foot site in an area generally known as Cherry Creek North. Zoning in this area is C-CCN-5 (Commercial-Cherry Creek North-up to 5 stories). The building was constructed in 1966 and includes both office and retail/restaurant uses.

Petitioner's Evidence

Mr. Wrench, the owner of the subject property, objected to the assigned value, citing negative aspects within the subject property; Respondent's use of inappropriate comparable sales and a failure to adequately consider the income approach in the conclusion of value.

According to Mr. Wrench, the subject property's value is diminished due to a zoning requirement that limits construction on a portion of the site to only three stories. The subject building, constructed in 1966, is adequate for the current uses but is not competitive with modern construction. According to Mr. Wrench, replacement of the existing improvements is not realistic because the cost would exceed the expected cash flow.

Mr. Wrench considers the income approach as the only appropriate method to determine value. Offering Income Summary Sheets for the building as of December 2015, June 2016 and December 2016, Mr. Wrench derived cash flows of \$249,261.98 for 2015 and \$301,139.20 for 2016. Basing a capitalization rate upon his experience in owning, developing and leasing property in Cherry Creek, Mr. Wrench considers a capitalization rate of 8% to 10% as appropriate for the valuation of the subject. Mr. Wrench concluded to the subject's 2017 value of \$2,900,000.

Respondent's Evidence

Respondent presented Mr. Greg Feese, a Certified General Appraiser for the Denver Assessor's Office as an expert witness. Mr. Feese presented an appraisal report in which he considered the three approaches to value. Based upon his analysis, the witness concluded the highest and best use of the subject, as of the valuation date, to be vacant ground with the improvements contributing an interim value until redevelopment occurs. Respondent's witness presented four comparable land sales ranging in sale price from \$1,200,000 to \$22,000,000 and in size from 3,750 to 51,481 square feet. After adjustments were made, the sales ranged in value from \$1,381,531 to \$19,448,000, representing a unit value from \$364.00 to \$378.00 per square foot. Giving most weight to Sale No. 1, Mr. Feese concluded to a unit value of \$365.00 per square foot resulting in a land value of \$6,095,500 to which was added the interim value of \$1,000 for the improvements to determine a market value of \$6,096,500.

Board's Findings

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).

The Board finds that Petitioner did not provide sufficient market analysis to persuade the Board that the value assigned by Respondent for tax year 2017 was incorrect. Petitioner failed to consider either the market approach or the cost approach. Petitioner relied solely upon the income and expenses obtained by the subject property with no evidence these figures were supported by analysis of the local market. The Board finds that Respondent's witness correctly applied the

principal of highest and best use; considered all three valuation approaches and provided sufficient probative evidence to support the Denver Board of Equalization's assigned value of \$4,375,000.

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 10th day of May, 2019.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

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

Milla Lishchuk



Gregg Near