

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.:</b> 76060
Petitioner:  <b>LANDMARK SPE LLC</b>  v.  Respondent:  <b>ARAPAHOE COUNTY BOARD OF EQUALIZATION</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on May 19, 2020, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Original Exhibit 1, Revised Exhibit 1, Rebuttal Exhibits 2 and 2A, and Respondent’s Exhibits A, and Respondent’s Rebuttal Exhibits B-F.

**DESCRIPTION OF THE SUBJECT PROPERTY**

The Petitioner, on May 18, 2020, filed a withdrawal of four of the eight parcels listed in the original petition. Outlined below are the eight parcels listed in Petitioner’s September 4, 2019 Petition, along with a designation of their status at the time of the hearing on this matter:

<b>County Schedule Numbers</b>	<b>Assigned Identification Number</b>	<b>Suite Identification</b>	<b>Street Address</b>	<b>Status at Time of Hearing</b>
035036081	2075-16-2-24-001	B Suites	7600 Landmark Way 2	Withdrawn
034874569	2075-16-2-19-004	F Suites	5375 Landmark Place	Withdrawn
034838520	2075-16-2-18-002	H-I-J Suites	5364 Greenwood Plaza	Withdrawn
034838538	2075-16-2-18-003	Land	5390 Greenwood Plaza	Withdrawn
034890017	2075-16-2-21-002	A Suites	7600 Landmark Way 1	Active
034876642	2075-16-2-20-131	C Suites	5455 Landmark Place	Active

034874551	2075-16-2-19-003	D Suites	5400 Landmark Place	Active
034874577	2075-16-2-19-005	E Suites	5425 Landmark Place	Active

The subject property is part of a shopping area in Greenwood Village containing a total of 141,067 square feet of gross leasable area across 8 parcels. These include retail and office spaces, a movie theater, and a vacant commercial site. The aggregate reconciled actual value of the four remaining parcels, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

CBOE’s Assigned Value: \$ 20,130,000

Petitioner’s Requested Value: \$ 13,330,000

**BURDEN OF PROOF AND STANDARD OF REVIEW**

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor’s valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm’n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board “is commonly understood as a new trial of an entire controversy.” *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id.* However, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S. (2019).

**APPLICABLE LAW AND DEFINITIONS**

The actual value of commercial real property is based on appropriate consideration of the cost approach, market approach, and income approach to appraisal. § 39-1-103(5)(a), C.R.S. (2019). The market approach to appraisal requires a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes. § 39-1-103(8)(a)(I),

C.R.S. (2019).

Under the income approach to appraisal, a triple net (NNN) lease is a lease in which the landlord pays structural repairs only. The owner is responsible only for structural repairs, replacement reserves and management. Appraisal Institute, *The Dictionary of Real Estate Appraisal* pp. 157-158 (6th ed. 2015).

## **FINDINGS AND CONCLUSIONS**

After consideration of the testimony and exhibits presented, the Board places significant weight on the following findings and conclusions.

### **I. Use of the Sales Comparison Approach**

Both parties considered and applied the sales comparison approach. After review of both reports the Board has narrowed the significant points of contention to the following:

- A. The influence of visibility, access and location;
- B. Location and similarity of the comparable sales;
- C. Adjustments to the comparable sales; and
- D. Valuation of the theatre.

In regard to question “A” the Board first turns to Exhibit 2A, the Offering Memorandum provided in Petitioner’s Exhibit 2, page 9. The memorandum includes the following statements; “The Landmark is the premier retail center in Southeast Denver...the Property is the preeminent shopping and entertainment destination in suburban Denver...a tremendous experience of patrons found nowhere else in the Denver market”. Ample credible testimony was presented in regard to the subject property being close to and within view of Interstate 25 as well as close to light rail.

In contrast to the above, under item “B”, Petitioner’s witness provided six comparable sales only one of which, Sale No. 1, shares anywhere near the same locational attributes, as these comparable sales are far from any interstate or light rail. The Board was not convinced that the remaining sales from locations as diverse as Green Valley Ranch, Gun Club Road, the Town of Parker and the City of Lakewood offer similar features to those of the subject property.

In regard to item “C” the Board found instructive the two comparable sales relied upon by both parties. The comparable sales were 10111 Inverness (Respondent’s 7 and Petitioner’s 1) and 12501 and 12509 E Lincoln Avenue (Respondent’s 4 and Petitioner’s 5). First, in regard to 10111 Inverness, Respondent made no adjustments to the sale and concluded a unit value of \$285.15. On the other hand Petitioner’s witness adjusted the sale downward 5% for location and an additional 10% for access resulting in a total negative adjustment of 15% thus concluding to a far different unit value of \$232.78 per square foot. The Board is not convinced the reported access exceeds the influence of location. Second, in a similar manner Respondent’s witness adjusted 12501 and 12509 E. Lincoln Avenue upward by 10% for a location considered inferior

to the subject for an adjusted unit value of \$267.42. For the same sale Petitioner applied a 3% upward adjustment for market conditions (time) and downward 10% for access resulting in a total negative adjustment of 7% and a unit value of \$211.310. Again, the Board does not agree that the significant factor is access over location.

Finally, regarding Item “D” the Board is not swayed by Petitioner’s witness who excluded any sales of theatres from the local market on the basis of an insufficient number of screens. The witness then presented four comparable sales containing 12, 14 and 16 screens that occurred in Laredo, Texas. The Board finds these transactions, from a far different market and location, are not comparable. In contrast, Respondent’s witness provided four comparable sales from within the Denver market. The Board finds Petitioner’s theatre sales to be insufficient.

In conclusion the Board finds Petitioner has not met the burden of proof required in the Sales Comparison Approach.

## **II Use of the Income Approach**

Both parties considered the income approach to value the subject.

After careful consideration of the exhibits and testimony provided the Board has found there are some positions similarly held by both parties. The parties applied the same vacancy rate of 10% and developed similar capitalization rates. The Respondent’s witness determined a rate of 7% and the Petitioner’s witness concluded to rate of 7.5% and a “tax adjusted” rate of 7.85%.

The Board has narrowed the remaining points of contention to the following:

- A. The number and type of rental comparables;
- B. Location and similarity of the rental comparables;
- C. Adjustments to the comparable rentals; and
- D. Valuation of the theatre.

In regard to point “A” Petitioner’s witness presented four comparable retail rentals. The rent comparables ranged from 1,320 square feet to 6,499 square feet and included a dental office, Karate studio, pizza parlor and a Chick-fil-A. The rentals were established from April 2017 to March 2018 with NNN rates from \$20.00/SF (karate studio) to \$32.00/SF (dental office) for an average of \$26.51 per square foot.

In contrast, Respondent’s witness presented sixteen comparable rentals for retail space and four rentals for theatres. Retail rents ranged from \$22.00 (nail salon) to \$40.00 (shoe repair and three restaurants) per square foot on a NNN basis with an average per square foot rent of \$24.52/SF for retail and \$32.21 for restaurants. On the basis of quantity alone the Board places more weight on the research provided by Respondent’s witness.

In regard to point “B” Petitioner’s witness reported retail rentals situated in a band stretching across the metro area from east of E-470 at Orchard Avenue to west of S. Kipling Street north of Highway 285. No retail comparables were situated in proximity to the subject along I-25. Respondent’s retail rentals were all from the south metro area, generally proximate to the subject. Based upon the greater similarity of location the Board is swayed by Respondent’s analysis.

For point “C” Petitioner’s witness determined retail contract rents from \$20.00 to \$32.00 per square foot on a NNN basis. After adjustment the rental range narrowed to \$26.03 to \$28.02. The witness applied adjusted rentals from \$18.00 to \$29.03 to different locations within the subject. The addenda to the report also indicated retail tenant improvement allowances were granted from \$17.50 to \$38.00 per square foot with two of the four also receiving free rent for three months. No explanation was provided regarding the influence, if any, for the allowances or the free rent. The Board finds that Petitioner’s unexplained free and reduced rent calculations are not reliable indicia of the subject property’s actual value.

Respondent’s witness reported retail rents ranging from \$22.00 (nail salon) to \$40.00 (shoe repair and three restaurants) per square foot on a NNN net basis with an average per square foot rent of \$24.52/SF for retail and \$32.21 for restaurants. The rentals began from August 2016 to June 2018. After adjustment the range was from \$15.00 to less than \$35.27 and the witness concluded a NNN rate of \$20.00/SF. Given the number of rentals that were researched and the wide range of tenants within the subject property, Respondent’s analysis is more convincing.

Regarding point “D” Petitioner’s witness reported four theatre rents. Two theatre comparables had NNN rates ranging from \$15.00 to \$22.75 per square foot. Two theatres were reported with gross rents from \$13.23 to \$35.27 per square foot. Rent rates were determined from 2013 to 2016. Based on the above the witness adopted a NNN rate of \$10.50 per square foot.

Respondent’s witness provided four theatre rents, three of which were within the 5-year valuation period. Rates were reported ranging from \$15.00 (NNN) to \$35.27 (gross) per square foot. The above rental rates began from 2011 to 2016. Based on the above the witness adopted a mid-range rate of \$20.00 per square foot.

The Board does not agree with the process Petitioner’s witness employed in development of a rental rate for the theatre. The witness derived rental rates with a wide range from \$13.23 to \$35.27 per square foot yet adopted a rate of \$10.50 per square foot. Limited explanation was provided to explain the adoption of a rate below those developed from the research. The Board gives no credence to this analysis.

Based on the evidence presented, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

## **ORDER**

The petition is **DENIED**.

## **APPEAL RIGHTS**

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.

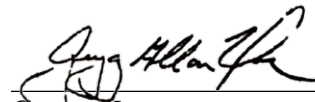
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S. (2019).

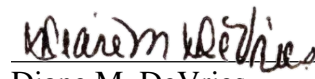
**DATED and MAILED** this 29<sup>th</sup> day of June, 2020.

**BOARD OF ASSESSMENT APPEALS**

Drafting Board Member:

  
\_\_\_\_\_  
Gregg Near

Concurring Board Member:

  
\_\_\_\_\_  
Diane M. DeVries  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*



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

  
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Kristin Rozansky