

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>HILLTOP STORAGE, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 76069, 80106</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 17, 2020, Diane DeVries and Sondra Mercier presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the actual value of the subject property for tax years 2019 and 2020.

The Board conducted a combined hearing for the appeals assigned docket number 76069 (an appeal of the 2019 taxable value assigned to property owned by Hilltop Storage, LLC) and docket number 80106 (an appeal of the 2020 taxable value of the same property). The Board also incorporated testimony from this appeal into the hearing concerning the appeal of the 2019 and 2020 value of property owned by Aurora Storage, LLC, assigned docket numbers 76062 and 80109.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibits 1-1 and Rebuttal Exhibits 2, 3-1, 4, 5-1, and 6. The Board admitted Respondent’s Exhibit A-1 and Rebuttal Exhibits E-1, F-1 and G-1. The Board admitted Jessica M. Ballou, Certified General Appraiser with National Valuation Consultants, Inc., and Stefani Sanchez, with the Arapahoe County Assessor’s Office, as expert witnesses.

DESCRIPTION OF THE SUBJECT PROPERTY

8198 Southpark Court, Littleton, Arapahoe County Schedule No. 2077-32-4-02-005

The subject property is owned by Petitioner, Hilltop Storage, LLC. The subject is a 503-unit, climate-controlled, self-storage facility with approximately 59,100± square feet of rentable

area. The building was completed in 2016 and rated good/excellent for condition, categorized by Petitioner’s witness, Ms. Ballou, as a Class A institutional quality facility. The building is situated on a 1.75-acre site.

The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by each party, are:

CBOE’s Assigned Value:	\$5,300,278
Respondent’s Recommended Value:	\$5,300,278
Petitioner’s Requested Value:	\$3,900,000

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 (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 Commission*, 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 the BAA, 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 Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, a 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 board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.*

APPLICABLE LAW AND AUTHORITATIVE SOURCES

As a general rule, section 39-1-106, C.R.S., requires that the fee simple estate in property be valued for property tax purposes. *City and Cnty of Denver v. Bd. of Assessment Appeals of the State of Colo.*, 848 P. 2d 355, 359 (Colo. 1993). Market value of the fee simple estate should reflect market assumptions, including market rent, market expenses, and market occupancy. *Assessor’s Reference Library – Volume 3, Real Property Valuation Manual*, Division of Property Taxation, Page 2.2, Dated 1-89, Rev. 4-20.

The Dictionary of Real Estate Appraisal defines market value as follows:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and

for self-interest, and assuming that neither is under undue duress.

Appraisal Institute, *The Dictionary of Real Estate Appraisal* (6th ed. 2015), p. 141.

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require 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.

Market value of the fee simple estate should reflect market assumptions, including market rent, market expenses, and market occupancy. *Assessor's Reference Library – Volume 3, Real Property Valuation Manual*, Division of Property Taxation, pg. 2.2, dated 1-89, Rev. 4-20.

The income approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Bd. of Assessment Appeals of the State of Colo. v. Sonnenberg*, 797 P.2d 27, 31 (Colo. 1990). It generally involves calculating the income stream (rent) the property is capable of generating, capitalized to value at a rate typical within the relevant market. *Id.* “Market rent is the rental income a property would command in the open market. It is indicated by the current rents that are either paid or asked for comparable space with the same division of expenses as of the date of the appraisal...” *The Appraisal of Real Estate*, 14th Edition, pg. 447. “Market rents vary with economic conditions.” *Id.* “Economic conditions change, so leases negotiated in the past may not reflect current prevailing rents.” *Id.* at 466.

FINDINGS AND CONCLUSIONS

Based on the findings and conclusions presented, the Board finds that Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 2019 and 2020.

I. Appraisal Methodology

Both parties developed and gave some consideration to the cost, sales comparison and income approaches to value. The parties gave the greatest weight to the income approach in their final reconciliation of value.

The subject is a self-storage facility, which is an income producing investment property. The Board concurs that the income approach best reflects the methodology that a typical buyer would use in determining market value for the subject.

II. Competitive Market Analysis

Ms. Ballou testified that at the time of construction of the subject in 2016, market conditions for self-storage facilities were peaking. However, market saturation caused economic conditions for this property type to decline in 2017 and 2018 with a decline in rent.

The Board was convinced that competition from 11 properties located within the primary trade area resulted in an oversupply of competition for the subject. Petitioner supported their contention of oversupply by a comparison of the ratio of total rentable square footage to population. Including the subject, the primary trade area represented a supply of 11.19 square feet per person, which was compared to a national ratio of 7.06 square feet per person, a State ratio of 9.14 square feet per person, and a metro area ratio of 6.15 square feet per person. Eliminating the two condo properties in the trade area brought the ratio down to 9.74 square feet per person, still in excess comparatively. Ms. Ballou testified that the subject's competitive market was oversaturated with units and that both current and future rents would be impacted. The appraisal concludes that "trade area rents could be affected by price-conscious tenants and multiple storage options in the trade area." (Exhibit 1-1, pgs. 58- 60.)

The Board did not find the trade area analysis presented by Respondent compelling, as it relied heavily on survey data for the metro area and region, well beyond the subject's trade area. (Exhibit A-1, pgs. 42-59.)

III. Income Approach

The Board found the appraisal report prepared by Petitioner compelling. Ms. Ballou performed a site-specific appraisal, basing many of her projections on data from five properties located within a 3-mile trade area, which she also compared to internal file data and the historical operating information for the subject.

To determine market rent for the subject, Ms. Ballou compared the subject's asking rent and contract rent to that of five of the most competitive properties, all located within a 3-mile radius of the subject. She concluded to an average rental rate of \$10.53 per square foot as market rent for the subject, which is above the subject's average asking rent of \$9.69, but below the subject's average contract rent of \$11.29 per square foot. Ms. Ballou noted that the oversupply and resulting competition has led to a downward trend in rent, as indicated by average asking rent below average contract rent. Gross annual potential rent was estimated at \$622,380. Additional income of \$32,400 was added for mailbox rental, along with sales of locks, boxes, moving supplies, and from security deposits etc. (Exhibit 1-1, pgs. 84-85.) Potential gross income was calculated at \$654,780. (Exhibit 1-1, pg. 88.)

Occupancy was projected at 85% based on an indicated range of 80% to 90% for the competitive properties. The subject was operating at an occupancy rate of 79% as of the date of value. A deduction of 15% for vacancy and an additional 2% for credit loss was taken against potential rental income. A deduction of \$111,313 for vacancy and collection loss resulted in effective gross income of \$543,467. (Exhibit 1-1, pgs. 86, 88.)

Petitioner's witness estimated expenses for the subject at \$3.78 per square foot (excluding taxes) based on a comparison of actual expenses to survey data. Expenses of \$223,608 were deducted, resulting in net operating income (NOI) of \$319,858 or \$5.41 per square foot. Petitioner's projected NOI based on market data was nearly double the actual NOI reported for the subject for the trailing 12 months, as the subject was still in lease-up in the year prior to the date of value and did not have stabilized revenue. (Exhibit 1-1, pgs. 87-88.)

Ms. Ballou considered capitalization rates based on three investor surveys, which were analyzed against the subject's strengths and weaknesses. Strengths of the subject included the quality of construction, proven occupancy up to 79%, and potential upside to the market given the cost to build. Weaknesses included the over-supplied trade area; the number of facilities in the trade area offering interior units; mediocre trade area demographics; and, the 574 additional units under construction in the trade area as of the date of value. She concluded to a stabilized capitalization rate of 6.00% for the subject, then added the tax rate, which resulted in a tax loaded capitalization rate of 8.34%. Petitioner's income approach indicated a value of \$3,800,000, rounded. (Exhibit 1-1, pg. 91.)

Conversely, the Board was not persuaded by the conclusion of value based on the income approach presented by Ms. Sanchez, an appraiser unlicensed in the state of Colorado. In part, this was because Ms. Sanchez relied on rental data from four un-identified self-storage facilities located throughout Arapahoe County. As the data was labeled as confidential, the Board was unable to determine from the documentary or testimonial evidence whether the comparable rental properties offered: 1) similar locational characteristics; 2) similar unit numbers or sizes; or 3) similar quality, age, or condition.

Ms. Sanchez reportedly placed greater weight on rental surveys for the Denver metro area, derived from a variety of sources. (Exhibit A-1, pgs. 50, 66.) She relied on occupancy survey data from Denver, Aurora, and Centennial; however, the parties applied a similar expense deduction. (Exhibit A-1, pg. 74.) Her capitalization rate was derived from sales and investor surveys, with insufficient analysis given to the risks associated with the subject in her conclusion of a 5.00% rate at the low end of the range.

IV. Cost and Sales Comparison Approaches

While both parties prepared cost and sales comparison approaches, the Board finds the income approach to provide the most reliable indication of value for self-storage facilities due to their income producing quality. The Board does not place weight on the cost and sales comparison approaches beyond the fact that both supported the income approaches provided by each party.

V. Reconciliation

The Board finds the conclusions reached within Petitioner's income approach credible. Ms. Jessica M. Ballou, MAI and Colorado Certified General Appraiser, provided a site-specific income analysis of the subject. The Board found the testimony presented by Ms. Ballou, a licensed appraiser, more credible. Most importantly, she performed a more site-specific appraisal, basing

her income projections on data from five properties located within a 3-mile trade area, which was compared to internal file data and the historical operating history of the subject. Ms. Ballou considered data from the regional market, national surveys and the operating expenses of the subject to determine a reasonable deduction for expenses. She weighed capitalization rate data against the specific strengths and weaknesses of the subject. Considering the oversaturation of the 3-mile trade area, she concluded to a reasonable capitalization rate of 6.00%.

Based on the findings and conclusions presented, the Board finds that Petitioner presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax years 2019 and 2020.

ORDER

The petition is **GRANTED**. The Board finds that Petitioner has met its burden of proving that the 2019 and 2020 taxable value of the property is incorrect. Respondent is ordered to reduce the 2019 actual value of the subject property to \$3,900,000.

The Arapahoe County Assessor is directed to change his/her records accordingly.

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.

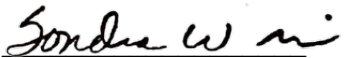
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

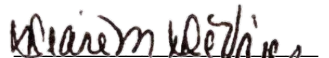
DATED and MAILED this 15th day of April , 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


Sondra W. Mercier

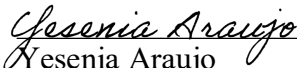
Concurring Board Member:


Diane 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.


Yesenia Araujo