

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner:  <b>DENVER WEST, LLC,</b>  v.  Respondent:  <b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b>	<b>Docket No.: 77367</b>
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on July 14, 2020, Diane DeVries, and Sondra Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Rebecca P. Klymkowsky, Esq. Petitioner is protesting the 2019 actual value of the subject property.

The Board consolidated dockets 77367 and 77369 for purposes of the hearing only. Separate orders have been issued for each docket number.

**EXHIBITS AND EXPERT WITNESSES**

The Board admitted into evidence Petitioner’s Exhibit 1 and Rebuttal Exhibits 1-7. The Board admitted Respondent’s Exhibit A and Rebuttal Exhibit B. The Board admitted Mr. Aaron Anderson, Certified General Appraiser with Real Analytic Advisors; and Mr. Robert D. Sayer, Certified General Appraiser with the Jefferson County Assessor’s Office, as expert witnesses.

**DESCRIPTION OF THE SUBJECT PROPERTY**

**14123 Denver West Parkway, Golden  
Jefferson County Schedule No. 300424482**

The subject property is owned by Petitioner, Denver West, LLC. The subject is a multi-tenant office building with a total of 88,161 square feet of net rentable area based on the rent roll provided by Petitioner. The building was constructed in 1996, and was reported in average condition. As of the date of value, the building had vacancy of approximately 18%.

The value assigned by the County Board of Equalization (“CBOE”), and recommended and requested by each party, are:

CBOE’s Assigned Value:	\$13,268,900
Respondent’s Recommended Value:	\$11,000,000
Petitioner’s Requested Value:	\$9,050,000

### **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 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 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, pg. 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 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.

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**

After consideration of the testimony and exhibits presented, the Board relies on the testimony of Petitioner’s expert witness, Certified General Appraiser Aaron Anderson, and the sales comparison approach and income approach to valuation that he presented in his appraisal, to find in favor of Petitioner.

### **I. Appraisal Methodology**

After consideration of all three approaches to value, both parties developed the sales and income approaches. Both parties applied equal weight to the two methodologies in their final reconciliation of value.

The subject is a leased office building constructed in the mid-1990s. The Board concurs that the sales comparison approach and income approach best reflect the methodology that a typical buyer would use in determining market value for the subject.

### **II. Sales Comparison Approach**

The Board finds the conclusions reached in Petitioner’s sales comparison approach credible. Petitioner’s witness, Mr. Anderson, analyzed five comparable sales of leased office buildings that transacted during the base period. All five are multi-tenant buildings leased to the estimated stabilized occupancy of 90% or greater as of the date of sale. Petitioner’s witness provided relevant national, regional, and submarket data to support adjustments. After quantitative adjustment, the sales indicate a value range of \$94.00 to \$124.00 per square foot. (Petitioner’s Exhibit 1, pg. 44.) Petitioner’s appraiser concluded to a unit value of \$110.00 per square foot, placing the greatest reliance on Sale

5. This produced a value indication of \$9,700,000 for the subject as if stabilized.

Conversely, the Board was not persuaded by the conclusion of value reached by Respondent's sales comparison approach. Respondent's witness, Mr. Robert D. Sayer, Certified General Appraiser with the Jefferson County Assessor's Office, considered five office building sales, including one common with Mr. Anderson's comparable sales. After qualitative adjustment, Respondent's sales indicate a unit value of less than \$137.21 per square foot. (Respondent's Exhibit A, pg. 51). Respondent concluded to a unit value of \$120.00 per square foot, applied to gross building area of 96,452 square feet, to produce a value of \$11,575,000.

The Board was not swayed by the comparable sales presented within Respondent's sales comparison approach. Respondent's witness presented sales that were reportedly selected based on having a high mill levy for taxation, a technique not typically employed in appraisal methodology. Respondent's sales include multi-building complexes, furnished buildings, and sales to owner-occupants, dissimilar to the subject property. More importantly, Respondent's sales failed to produce a range of potential value, with only an upper limit identified. There was insufficient support for the unit value conclusion of \$120.00 per square foot. The Board notes that Petitioner's concluded value of \$110.00 per square foot would fall within Respondent's range, in that it is below \$137.21 per square foot.

### **III. Income Approach**

Petitioner provided sufficient probative evidence to support the value indicated in its income approach. Petitioner's witness considered the actual existing tenant buildout of the subject and classified tenant spaces based on size as small, medium, large 1, and large 2. Two of the occupied units were leased during the base period. Petitioner determined that both were leased at market rates and gave the subject's actual base period lease agreements consideration in determining market rent for the subject. (Petitioner's Exhibit 1, pg. 50). Consideration was also given to data derived from lease information for similar office use in each size category. (Petitioner's Exhibit 1, pg. 52-70). Petitioner's concluded rates ranged from \$22.00 per square foot for the largest tenant space of roughly 45,000 square feet to a higher rate of \$24.00 per square foot for the three smallest spaces that were under 3,200 square feet in size. Mr. Anderson's rental conclusions produced total rental revenue of \$1,990,193, equal to a weighted average rate of \$22.57 per square foot. (Petitioner's Exhibit 1, pg. 70).

Mr. Anderson then deducted 10% for vacancy based on data for the Denver metro market and the subject's submarket. (Petitioner's Exhibit 1, pg. 34). He deducted an additional 1% for credit loss, resulting in a total deduction of 11% for vacancy and credit loss. This produced effective gross revenue of \$1,771,272. (Petitioner's Exhibit 1, pg. 77). Petitioner considered the subject's actual operating history as well as expense data from four comparable properties to estimate the appropriate deduction for expenses. Operating expenses were estimated at \$678,240 (without taxes). (Petitioner's Exhibit 1, pgs. 72-73) After deducting expenses, net operating income (NOI) was calculated as \$1,093,032. (Petitioner's Exhibit 1, pg. 77).

Petitioner's witness then reviewed capitalization rates indicated for the five comparable sales, analyzed investor survey data, and considered rate ranges produced through interviews with market

participants. (Petitioner's Exhibit 1, pgs. 74-76). A capitalization rate of 7.5% was concluded. Adding a tax load factor of 3.59%, Petitioner applied a capitalization rate of 11.09% to the concluded NOI to produce a stabilized value indication of \$9,850,000, rounded. (Petitioner's Exhibit 1, pg. 77).

Conversely, the Board finds Respondent's conclusion of value under the income approach to be unreliable. The Board was not convinced that Respondent's conclusion of market rent for the subject was based on transactions that accurately reflected market conditions during the base period. Respondent's witness analyzed rental rates for eight comparable properties; four leased on a net basis (tenant-paid expenses) and four leased on a full-service basis (landlord-paid expenses). (Respondent's Exhibit A, pgs. 38-42). The rental data was identified as confidential to the assessor's office, with limited information provided to the Board. Consequently, the Board was unable to determine the probative value of the data to effectively weigh the evidence. Further, Respondent's witness was not able to identify which, if any of the leases were signed during the relevant base period, and testified to his opinion that there is no legal requirement to consider whether the comparables' leases were negotiated within the base period. This leaves the Board unable to determine what weight the leases should have in Respondent's income approach analysis as indicators of market rent. As is noted in *The Appraisal of Real Estate*, market rents vary with changing economic conditions, and "leases negotiated in the past may not reflect current prevailing rents." *The Appraisal of Real Estate*, 14th Edition, pgs. 447, 466. Mr. Sayer's testimony indicated that the rental data may have represented contract rent in-place from leases signed under different economic conditions than were present during the base period. In addition, Respondent's witness testified that he gave no consideration to the two leases within the subject that transacted during the statutory base period, despite the relevance of these actual rent figures to the determination of value for the subject.

Mr. Sayer applied a rental rate of \$24.00 (full service gross) to 77,619 square feet of rentable area (or 88% of the building), but a rate of \$16.00 per square foot net of expenses was applied to the remaining 10,542 square feet of space (or 12% of the building). (Respondent's Exhibit A, pg. 44). To adjust for the use of a net rate, Mr. Sayer then added an additional \$10.00 per square foot for recovery of expenses on 12% of the building. This addition produced the equivalent of a full-service rate of \$26.00 per square foot for that portion of the building. A review of the rent analysis of full-service rates provided by Mr. Sayer would indicate rates ranging from \$23.00 to \$25.00 per square foot, with no support for the higher rate of \$26.00 on any portion of the building. (Respondent's Exhibit A, pg. 38).

Respondent's witness then applied a vacancy rate of 18%, which was within the range indicated by market data and equal to the current vacancy in the subject. (Respondent's Exhibit A, pg. 45). Expenses were estimated at \$674,634; and NOI was calculated as \$1,077,663. (Respondent's Exhibit A, pg. 44). A capitalization rate of 6.75% was applied. However, the Board finds Respondent's capitalization rate evidence to be inconclusive. After loading the capitalization rate by 3.59% for taxes, Respondent's income approach produced a value indication of \$10,420,000. (Respondent's Exhibit A, pg. 44).

Weighing the evidence presented, the Board was not convinced that Respondent's concluded market rent accurately reflected market conditions as of the date of value. Moreover, the Board could not determine from the evidence presented how Respondent arrived at his capitalization rate;

Respondent's capitalization rate was not supported by Respondent's own exhibit. (Respondent's Exhibit A, pg. 46). For these reasons, the Board did not find Respondent's income approach credible.

#### **IV. Adjustment for Vacancy**

As of the date of value, the occupancy of the subject was approximately 82%, slightly below the concluded stabilized rate of 90%. Petitioner presented no evidence of functional obsolescence associated with the subject that would cause the above market vacancy to continue.

Petitioner applied a deduction of \$740,000 as a reflection of the cost estimated to reach stabilized occupancy of 90%. After deducting the cost of reaching stabilized occupancy, Petitioner's approaches produced a value range of \$8,950,000 to \$9,100,000 for the subject. Petitioner reconciled to a value of \$9,050,000.

To estimate the lease-up cost, Mr. Anderson estimated the square footage that would be leased, the time required as a lease-up period, concessions, tenant improvement costs, lease commissions, and the profit incentive required by a prospective owner. The Board rejects Petitioner's deduction for lease-up costs as being highly speculative, unsupported by any evidence, and not in the spirit of the statutory requirement to apply market assumptions in valuing the subject. (*See* §39-1-106, C.R.S.; *Assessor's Reference Library – Volume 3, Real Property Valuation Manual*; Division of Property Taxation, pg. 2.2, dated 1-89, Rev. 4-20.)

#### **V. Reconciliation**

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 year 2019.

Petitioner included five sales of leased office buildings, and provided relevant national, regional, and submarket data to support quantified adjustments to those sales. Prior to the adjustment for lease-up, a value of \$9,700,000 was indicated by Petitioner's sales comparison approach. Similarly, Petitioner also provided sufficient probative evidence to support the value indicated by the income approach, at \$9,850,000 prior to the adjustment for lease-up. Petitioner provided comparable rental data relevant to the base period and supported deductions for vacancy and expenses with market data provided in the report.

Mr. Anderson reconciled the two approaches with equal weight, and concluded to a rounded value of \$9,050,000, inclusive of the lease-up adjustment. The Board recalculates this conclusion by adding back the \$740,000 lease-up deduction to indicate a value of \$9,790,000.

### **ORDER**

The Board finds that Petitioner has met its burden of proving that the 2019 value of the property is incorrect. Respondent is ordered to reduce the 2019 actual value of the subject property to \$9,790,000.

The Jefferson 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 20<sup>th</sup> day of October, 2020.

**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.

A handwritten signature in black ink that reads "Casie Stokes". The signature is written in a cursive style and is positioned above a horizontal line.

Casie Stokes