

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: DENVER WEST, LLC, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	Docket No.: 77369
FINAL AGENCY ORDER	

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 1-6. 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

**14103 Denver West Parkway, Golden
Jefferson County Schedule No. 300424481**

The subject property is owned by Petitioner, Denver West, LLC. The subject is a single-tenant office building with a total of 62,958 square feet of net rentable area based on the lease agreement with the current tenant reported by Petitioner. The building was constructed in 1995, and was reported in average condition. As of the date of value, the building was fully leased to a single tenant.

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:	\$8,931,400
Respondent's Recommended Value:	\$8,755,000
Petitioner's Requested Value:	\$6,225,000

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, 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 and relied on the sales and income approaches. Both parties gave 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 which transacted during the base period. Like the subject, all five were leased office buildings, and were leased to what was reported as stabilized occupancy of 90% or greater at the time of sale. Sales 2 and 3 were leased to single tenants, like the subject. Petitioner’s witness provided relevant national, regional, and submarket data to support adjustments. (Exhibit. 1, pgs. 43, 48-49.) After quantitative adjustment, the sales indicated a value range of \$94.00 to \$109.00 per square foot. (Petitioner’s Exhibit 1, pg. 45.) Petitioner’s

appraiser concluded to a unit value of \$100.00 per square foot, placing the greatest reliance on Sale 2, which was also a single tenant building. This produced a value indication of \$6,300,000 for the subject within the sales comparison approach.

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 that transacted within the base period. After qualitative adjustment, Respondent's sales indicated a unit value of more than \$137.21 per square foot but less than \$157.21 per square foot. Sales 2, 3 and 4 received no net qualitative adjustments, narrowing the range to \$143.13 to \$153.88 per square foot. (Respondent's Exhibit A, pg. 48.) Respondent concluded to a unit value of \$145.00 per square foot, applied to gross building area of 62,402 square feet, to produce a value of \$9,050,000 within the sales comparison approach. (Respondent's Exhibit A, pg. 50.)

The Board finds limited probative value in 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 found in appraisal methodology. Respondent's sales included multi-building complexes, furnished buildings, and sales to owner-occupants, dissimilar to the subject property. The Board was not swayed by the comparable sales presented by Respondent.

III. Income Approach

Petitioner provided sufficient probative evidence to support the value indicated in the income approach. On the date of value, the subject was leased to a single tenant. In his analysis, Mr. Anderson considered rental data for four tenants of comparable properties that ranged in size from 13,185 to 63,057 square feet; bracketing the actual size of the subject's existing single tenant, at 62,958 square feet. After adjustment, the comparable data indicated a narrow market rental rate range of \$21.09 to \$21.84 per square foot. Mr. Anderson applied a market rental rate of \$21.25 per square foot to the subject, which produced total rental revenue of \$1,337,858. (Exhibit 1, pgs. 53, 57.)

Mr. Anderson then deducted 10% for vacancy based on data for the Denver metro market and the subject's submarket. (Exhibit 1, pg. 35.) 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 \$1,190,693. (Exhibit 1, pg. 64.) 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 \$507,563 (without taxes). (Exhibit 1, pgs. 58-60.) After deducting expenses, net operating income (NOI) was calculated as \$683,130. (Exhibit 1, pg. 64.)

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. (Exhibit 1, pgs. 61-63.) A capitalization rate of 7.50% was concluded. Adding a tax load factor of 3.59%, Petitioner applied a rate of 11.09% to the concluded NOI to produce a value indication of \$6,150,000, rounded. (Exhibit 1, pg. 64.)

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 vacancy and capitalization rates were not supported by the evidence.

Respondent's witness analyzed rental rates for four comparable properties with tenant sizes of 3,205 to 20,593 square feet. (Exhibit A, pg. 38.) He applied a rental rate of \$24.00 per square foot. Potential gross income was calculated as \$1,497,672. (Exhibit A, pg. 41.) Mr. Sayer applied a vacancy rate of 5%. (Exhibit A, pg. 42.) Expenses were estimated at \$547,774, and NOI was calculated as \$875,015. (Exhibit A, pg. 41.) A capitalization rate of 6.75% was applied. After loading the capitalization rate by 3.59% for taxes, Respondent's income approach produced a value indication of \$8,460,000. (Exhibit A, pg. 41.)

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. 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. 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.

Additionally, 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 effectively weigh this evidence.

Finally, neither Respondent's vacancy rate nor his capitalization rate was supported by any evidence in the record. Despite inclusion of survey data in his Exhibit A suggesting a significantly higher vacancy rate in excess of 15%, Respondent inexplicably concluded to a much lower vacancy rate of 5%. (Exhibit A, pg. 42.) Respondent's capitalization rate evidence was found inconclusive by the Board, in that the Board could not determine from the evidence presented how Respondent arrived at it, and it did not seem to be supported by Respondent's own exhibit. (Exhibit A, pg. 43.)

Weighing the evidence presented, the Board had no way to judge whether Respondent's concluded market rent accurately reflected market conditions as of the date of value. Neither Respondent's low vacancy rate nor the selected capitalization rate were supported by Respondent's own exhibit or any of the evidence presented. For these reasons, the Board did not find Respondent's income approach credible.

IV. Reconciliation

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 year 2019.

Petitioner included five sales of leased office buildings, including two that were leased to single tenants. Petitioner's witness provided relevant national, regional, and submarket data to support quantified adjustments to those sales. A value of \$6,300,000 was indicated by Petitioner's sales comparison approach. Petitioner also provided sufficient probative evidence to support the value indicated by the income approach, concluded as \$6,150,000. Petitioner provided comparable rental data relevant to the base period and supported deductions for vacancy and expenses with market data provided in the report. Petitioner's expert witness, Mr. Anderson, reconciled the two approaches with equal weight; and, concluded to a value of \$6,225,000. The Board concurs that this is the correct value to assign to the property for tax year 2019.

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 \$6,225,000.

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.

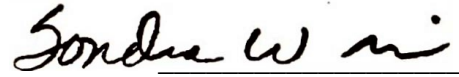
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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 20th day of October, 2020.

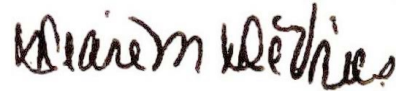
BOARD OF ASSESSMENT APPEALS:

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.

