

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 77537</b>
Petitioner:  <b>4221 MONACO STREET LLLP,</b>  v.  Respondent:  <b>DENVER COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on October 26, 2020, Diane M. DeVries and John DeRungs presiding. Attorney Thomas E. Downey Jr. appeared on behalf of the Petitioner. Respondent was represented by Charles T. Soloman, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibit 1 and Respondent’s Exhibit A and B.

**DESCRIPTION OF THE SUBJECT PROPERTY**

4221 Monaco Street, Denver, CO 80216  
County Parcel #01203-00-050-000

The subject property is a single-tenant industrial building found along the Highway I-70 corridor in northeast Denver near a concentration of warehouse and manufacturing facilities. It was originally constructed in the 1960s and then was added onto a few times by the owner user most recently in 2008. After that container manufacturing business sold in 2011, the property was leased for 12 years, the first 6 year period reportedly for \$3.55 PSF of building area. The building’s rentable area of 262,000 SF, more or less, fully occupies the 9.06 acre site. Useful features such as an average 19-foot warehouse clear height, 25 oversized truck doors, rail access and 12,900 SF of office space are found.

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$12,265,300
Petitioner's Requested Value:	\$10,300,000
Respondent's Recommended Value:	\$12,265,300

### **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.

### **APPLICABLE LAW**

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 cost approach involves estimating the cost of replacing the improvements to the property, less accrued depreciation. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo. 1990). Colorado law mandates that depreciation in the valuation of a taxpayer's

personal business property be allowed annually from the base year to the date of assessment. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

The income approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Sonnenberg*, 797 P.2d at 31. 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.*

### **FINDINGS AND CONCLUSIONS**

Petitioner presented the testimony of appraiser Martin Ward, along with Mr. Ward's appraisal of the subject property. Mr. Ward developed a sales comparison approach and an income approach to value. He did not develop a cost approach due to the age of the building.

The Board recognizes that very large (over 200,000 SF) single tenant warehouses are sold infrequently, making it difficult to find adequate data to support a market value conclusion. Evidence from each party's appraisals showed adjusted sales for three different properties in their market approaches, but they also included one property in common located at 4650 Steele Street. It is a much smaller building than the subject and the remaining comparables, and was older but had a new roof. It is most proximate to the subject property and the Board favors the use of its sale and resale alone.

The effective date of value for the subject for tax year 2019 is June 30, 2018. *See* § 39-1-104(10.2), C.R.S. For purposes of the ad valorem taxation of property, an appraisal should analyze sales data to determine if any differences exist between market conditions at the time of a comparable sale, and the valuation date for the subject property being appraised. §§ 39-1-103(8)(a)(I), 39-1-104(10.2), C.R.S. Depending on market conditions, an adjustment may be required to comparable sales prices, resulting in an estimate of what the comparable would have sold for on the date of value. *See* A.R.L. Vol. 3, pp. 2.21-2.22.

After applying only downward adjustments totaling 20%, Petitioner's appraisal put an indication from a December 2016 sale of the Steele property alone at \$42.23 PSF – within 5% of Petitioner's final value conclusion. But statistics relating to average rental rates presented in the report's market analysis clearly show at least a 7% increase in the 18 months after that sale. The Board deems this increase unlikely to be attributable to just higher rental rates from new inventory (as Petitioner's appraiser testified) and finds it is more likely indicative of improving market conditions, where upward adjustment should be applied.

Indeed, Respondent's appraisal used the indication at \$71.75 PSF from a second re-sale of the Steele property within a few weeks before the valuation date in June 2018. That put it within 3% of their final market value conclusion (supportive of the CBOE-assigned value). A cost to cure adjustment upward of \$12.40 PSF for its poor condition only accounts for about half of the increase from December 2016 to June 2018. At 125%, that remaining difference is a likely indication of improved market conditions.

Each party's appraiser selected comparable rental data to support a conclusion of market

rent in each appraisal as part of their respective income approaches to value. Again, Petitioner relied on comparable rental rates reported from January 2015 to September 2017 without time condition adjustment. Meanwhile, neither appraisal reached an opinion in light of the reported contract rental rate at \$3.55 PSF for the subject. It was established six years before, in 2011, in the depths of the last market downturn. The Petitioner's appraiser testified that he was not informed of this lease agreement or of the current rental rate. But even without the likely escalation of that contract rental rate in 2017, it is at least 18% over the concluded rental rate of \$3.00 PSF found in Petitioner's appraisal. That alone compromises the conclusion reached in Petitioner's Income Approach.

The Board finds that Petitioner has not met its burden of proving that the assigned value for tax year 2019 is incorrect. Petitioner's appraisal failed to adjust comparable sales and lease data for market conditions that the appraisal's market analysis showed were improving. As a result, the Board finds Petitioner's conclusion of value unpersuasive.

### **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.

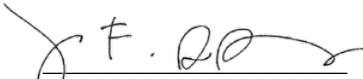
*See* § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

DATED and MAILED this day 9<sup>th</sup> of April, 2021.

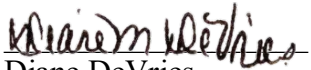
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

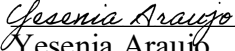


  
John DeRungs

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 order of the Board of Assessment Appeals.

  
Yesenia Araujo