

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 78511</b>
Petitioner:  <b>JOHNS MANVILLE,</b>  v.  Respondent:  <b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on October 5 and 6, 2020, Diane DeVries, Sondra Mercier and John DeRungs presiding. Petitioner Johns Manville (JM) was represented by Robert Gunning, Esq. of Maxfield Gunning, LLP. Respondent was represented by Rebecca Klymkowsky, Esq. of the Jefferson County Attorney’s office. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits 1-5 and Respondent’s Exhibits A and B. The Board also relies on the Stipulated Facts in the “Parties’ Amended Stipulation for Hearing.” The Board also received pre-hearing written statements and post-hearing Closing Arguments from the parties. To the extent Respondent’s Closing Argument referenced material and information that the Board did not admit into the evidentiary record by stipulation or by request of a party during the hearing, the Board does not consider it in reaching this decision on the merits.

**DESCRIPTION OF THE SUBJECT PROPERTY**

10100 West Ute Avenue, Littleton, Colorado 80127  
County Schedule No. 300038579

The subject property lies in unincorporated south Jefferson County near the Kipling exit of Highway C-470. Known as the JM Technical Center, it is a complex of five low-rise buildings (adopted by the parties as Buildings 1 through 5) and ancillary utility structures generally built in the 1970s and reportedly used for research and development. They occupy a site designated as Use

Area 1 in the approved Mountain Technical Center Official Development Plan (“ODP”). See Exhibit A, pp. 88-90, “Mountain Technical Center Official Development Plan.” At 41½ acres, Use Area 1 is the only developed portion of the larger 82-acre project that also includes Use Area 2 at 26 acres, and 14½ acres of unbuildable land. Based on the party’s description of the buildings as largely in their original condition, the disputed total square footage is either 322,197 SF (BOE) or 320,008 SF (JM). The parties stipulated in relevant part to the size of only some of the improvements. As described, the disputed total square footage is 2,189 SF apart.

The appealed value assigned by the County Board of Equalization (“CBOE”) below, the parties’ assertions of the subject property’s value, and the Board of Assessment Appeals’ concluded value are as follows:

CBOE Value:	\$29,974,035
Petitioner’s Requested Value:	\$20,900,000
Respondent’s Requested Value:	\$27,000,000
Board’s Concluded Value:	\$27,000,000

### **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 or classification 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, in this appeal, 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. (2020).

### **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**

Appraiser David Clayton of Clayton and Company appeared as an expert witness for Petitioner, and testified regarding his appraisal of the subject property. Mr. Clayton considered all three approaches to value – the cost approach, sales comparison approach, and income approach. He developed a cost and sales comparison approach, but did not perform an income approach due to his conclusion that it was not relevant. He determined it not to be relevant primarily he could not find relevant comparable rentals for this owner-occupied, specialized use property, which he opined would be sold as a vacant building rather than rented as an income-producing property.

Appraiser Robert Sayer appeared as an expert witness for the CBOE, and testified regarding his appraisal of the subject property. Mr. Sayer considered and developed an opinion of value under all three approaches to value. Mr. Sayer determined that the CBOE value below of \$29,974,035 was too high, and that the actual value for the subject property for tax year 2019 should be \$27,000,000.

Petitioner argued that the County has overvalued the property, and that the CBOE's appraised value at hearing was not reliable evidence that the appealed value or the value of \$27,000,000 is correct. Petitioner contended the County has overvalued the property by misclassifying buildings on the property as part of developing a Cost Approach. Petitioner also claimed that the County based the land value component of their Cost Approach was on value indications from better-located sites, and that average values in Boulder County (where the County's land sales were primarily located) are higher than those found in the Denver area. In addition, Petitioner argued that no excess land should be valued based on pure speculation that it could be separately developed. Finally, Petitioner objected to comparing the subject property with other properties at a superior location outside the Denver Metropolitan area within a Sales Comparison Approach.

The Board finds neither appraiser developed a reliable estimate of value for the subject

using the Cost Approach. Both parties used the Marshall Valuation Service as a source to estimate the buildings' replacement costs. However, the Board finds that an inadequate description of the property's improvements compromised the use and conclusions drawn from the Marshall Valuation Service. Axiomatically, the reliability of valuation output depends on the reliability of the input; namely, in this case, a full understanding of the buildings' construction, size and use. Without as-built drawings or their equivalent, the Board finds the parties' appraisers were unable to make the needed judgments that the Marshall Valuation Service requires, and so the valuation output did not adequately support a Cost Approach for the property. The Board was therefore not persuaded by Petitioner's Cost Approach that the County incorrectly valued the subject or that the value for the subject should be \$20,900,000.

The Board further finds Petitioner failed to recognize the value contributed to the subject property by its excess land. The Official Development Plan for the property shows the property owner is entitled to build a wide variety of commercial uses, of up to 300,000 SF of building area, on 26 acres of vacant land designated "Use Area 2." The Board finds Petitioner's land sales to be reliable comparable sales, and convincing evidence that the subject property's unit value for land is \$2.50 PSF – both for Use Area 1 and the excess land in Use Area 2. However, this unit value, even though lower than Respondent's, does not support Petitioner's requested value for the subject of \$20,900,000. Applying Petitioner's concluded land value at \$2.50 PSF produces a value for the 26 acres of excess land alone at \$3,937,990, or \$3.9 million rounded, using the methodology found in Respondent's Income Approach. (Exhibit A, p. 66.)

The Board rejects Petitioner's contention that the excess land (Use Area 2) has no value due to its development potential being speculative. The subject property is zoned PUD and its use is governed by the ODP. While there would be processes (including County Board approval), costs, and a level of uncertainty in outcome associated with the developing Use Area 2, this is the case with any new development, and does not mean developable land has no value. The subject property's excess land has development potential, and a buyer's assessment of its value would include consideration of the costs of development. The possible future uses of Use Area 2 are not speculative, in that they are delineated by the ODP. The Board's attribution of value to Use Area 2 is also not speculative, in that it considers the value of Use Area 2 only in its present condition, as it existed on January 1, 2019. *See Bd. of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146, 154 (Colo. 1988) (a property's highest and best use is only relevant to the Board's determination of the price on which a willing buyer and a willing seller would agree for the property in its present condition).

The excess land value must be added to the value reached in the Sales Comparison Approach for the improved portion of the property. The Board also found Petitioner's building sales data within its Sales Comparison Approach reliable indicators of value, but not supportive of Petitioner's requested value of \$20,900,000. The Board was convinced by raw sales data collected by Petitioner that adequate sales data can be found in the Denver metro area with which to support a sales comparison approach. Specifically, Petitioner's Improved Industrial Sales 4 at 278,812 SF, and Sale 5 at 326,900 SF, compare closely to subject by size. After time adjustment, they supply indications of value of at least \$57.11 PSF and \$67.25 PSF, or from \$18.3 to \$21.5 million. However, because they contain only a modest amount of office space (up to 8% of their total square footage), they serve to set only a lower limit of value for the subject property's improvements,

which have almost twice that amount of office space.

The Board finds Petitioner's requested value of \$20,900,000 is not supported. The Board concludes that the subject's value is more than its excess land value of \$3.9 million plus an improvement value of at least \$21.5 million; in other words, more than \$25.4 million. The Board finds that Petitioner's data supports a value for the subject above \$25.4 million.

The valuation evidence submitted by the Respondent supported a lower value for the subject property than was assigned by the CBOE below – \$27,000,000 – and the County requested that the Board adopt this value. Because Petitioner's evidence supported a value of more than \$25,400,000, and the County's evidence supported a value of \$27,000,000, the Board finds that the weight of the evidence supports adoption of the County's requested value as the correct value for the subject property for tax year 2019.

### **ORDER**

The petition is **GRANTED**. The Jefferson County Assessor is ordered to update its 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.

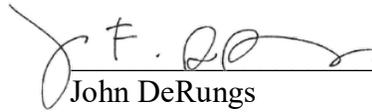
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*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 26<sup>th</sup> day of April, 2021.

**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

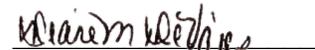
  
John DeRungs



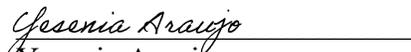
Concurring Board Member:

  
Sondra Mercier  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*

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