

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.:</b> 78923
Petitioner:  <b>SUSAN S. HOMBURGER,</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 November 17, 2020, Amy Williams and Valerie Bartell presiding. Petitioner Susan S. Homburger appeared pro se. Respondent was represented by Rebecca Klymkowsky, attorney for the Jefferson County Board of Equalization. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibit 1, a list of comparable sales that was attached to the petition, and Respondent’s Exhibit A.

**DESCRIPTION OF THE SUBJECT PROPERTY**

Address: 215 South Wadsworth Boulevard, Suite 303, Lakewood, CO  
County Schedule No.: 300449630

The subject property is an office condominium property. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below, and as requested by Petitioner, and concluded by the Board, are:

CBOE’s Assigned Value:	\$ 310,365
Petitioner’s Requested Value:	\$ 280,478
Board’s Concluded Value:	\$ 310,365

## **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, 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

The subject property is an office condominium within a larger office building located in Lakewood, Colorado. Petitioner, along with Petitioner's spouse John Homburger, provided testimony disputing the 2019 value assigned by the Jefferson County Board of Equalization. The Jefferson County Board of Equalization assigned a value of \$310,365 to the property for tax year 2019.

Petitioner provided a grid of six comparable sales of units within the subject's office building. Sales all occurred between December 2016 and May 2018. Petitioner testified that the subject's condition on the assessment date was relatively representative of recent comparable sales in the building. Therefore, Petitioner took the average sale price per square foot of \$144.47 times the square footage of 2,299 square feet of area for the subject unit. The petition and Exhibit 1 states that this equals \$280,478. However, the Board re-calculated this figure and determined that \$144.47 times 2,299 square feet is \$332,137.

Respondent offered the testimony of Robert Sayer, a Certified General Appraiser with the Jefferson County Assessor's Office. Mr. Sayer prepared an appraisal report (admitted as Exhibit A), dated October 15, 2020, valuing the property at \$310,365. The appraisal described the subject as in Average Condition. Respondent's witness was permitted to inspect the unit and was able to interview the owner regarding the condition of the unit both on the date of inspection, and on the effective date of value (June 30, 2018). The appraisal utilized both the sales comparison and income approaches to value. The sales comparison approach utilized three comparable sales within the same building as the subject. Two of the three sales were also provided by Petitioner. The third sale – of Unit 300 – occurred in 2014, which is outside the base period. The concluded unit value in the appraisal according to the sales comparison approach does not appear to put any weight on this third comparable. Had the appraisal included the sale next closest in square footage as provided by Petitioner (Unit 520) occurring during the base period, that comparable would have a unit value of \$144.99 per square foot, according to Petitioner's grid, which would not help the Petitioner's position. Therefore, it appears the Respondent's witness applied reasonable judgment when determining the applicability of a sale outside the base period. Thus, the Board will also not place any weight on the third comparable sale, and the Board will not substitute Respondent's sale 3 with Petitioner's comparable Unit 520. The concluded unit value according to the appraisal is \$135 per square foot, which falls between the adjusted values of comparable sale 1 and comparable sale 2.

Mr. Sayer also utilized an income approach in his appraisal of the subject. The income approach utilized three comparables, including one located in the subject's building to determine a market rent for the subject. The appraisal also included consideration for operating expenses, including vacancy and collection loss. The concluded capitalization rate was supported by both survey and extraction methods. The concluded value by the income approach was \$330,000. Respondent's witness testified that he placed all weight on the sales comparison approach, and utilized the income approach as a test of reasonableness for the sales comparison approach. Respondent's witness testified that this is due to the fact that a typical buyer for a property similar to the subject would be an owner-user, and would not generally buy the property as an investment.

The Board finds that Petitioner failed to meet its burden of demonstrating that the value assigned by the Jefferson County Board of Equalization of \$310,365 is incorrect. In addition, the Board concludes that Respondent's Appraisal Report dated October 15, 2020 provides a reasonable basis supporting the \$310,365 value of the subject as of June 30, 2018.

### **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.

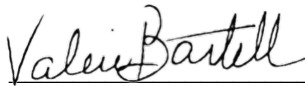
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*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 5<sup>th</sup> day of April 2021.

### **BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

  
Valerie C. Bartell



I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.

*Yesenia Araujo*  
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Yesenia Araujo

Concurring Board Member:

*Amy Williams*  
\_\_\_\_\_  
Amy Williams  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*