

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 79222
Petitioner: SOUTHGLENN PROPERTY HOLDINGS, LLC, v. Respondent: ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on January 26, 2021, Diane DeVries and John DeRungs presiding. Petitioner Southglenn Property Holdings LLC was represented by Kendra L. Goldstein, Esq. of Goldstein Law Firm LLC. Respondent was represented by Benjamin Swartzendruber, Esq. of the Arapahoe County Attorney’s office. Petitioner seeks an abatement or refund in this appeal of the actual value of the subject property for tax years 2017 and 2018.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibits 1-2 and Respondent’s Exhibits A. Richard P. Krump appeared as an expert witness for Petitioner. Richard B. Chase appeared as an expert witness for the BOCC.

DESCRIPTION OF THE SUBJECT PROPERTY

6955 South York Street, Centennial, Colorado
County Schedule No. 2077-26-1-30-008

The subject property is a 2.45-acre lot in the Streets at SouthGlenn retail complex located in the southwest quadrant of the intersection of East Arapahoe Road and South University Boulevard in Centennial, Colorado. A multi-tenant retail structure with 57,395-SF of gross leasable area (GLA) was built here in 2009 and is anchored by a national chain tenant (Old Navy) with 14,991-SF of space.

As shown below, the subject property’s actual value, as assigned by the County Board of Equalization (“BOCC”) and as requested by Petitioner, are:

BOCC’s Assigned Value:	\$10,300,000
Petitioner’s Requested Value:	\$8,000,000

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 proceeding below 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 BOCC § 39-8-108(5)(a), C.R.S. (2021).

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 Board heard the testimony of Richard Krump, a Certified General Appraiser called by Petitioner to provide expert testimony concerning his appraisal of the subject property. The Board also heard the testimony of Richard Chase, Senior Commercial Appraiser with the Arapahoe County Assessor's Office, called by Respondent to provide expert testimony concerning his appraisal of the subject property.

Mr. Krump concluded to a value under both the income approach and market approach. Mr. Chase developed the cost approach and income approach, and used the market approach as a test of reasonableness. Both parties agreed that the Income Approach to value deserved most weight in reaching a value conclusion. The Board still finds that Petitioner's market approach evidence was persuasive. It included six adjusted comparable sales ranging from 33,344 to 234,500 SF that were sold from March 2015 to June 2016. The Respondent selected only three sales, two of which sold in 2013 and required significant adjustment. With GLA of 260,810, 268,263 and 430,191 SF, Mr. Chase's selected sale centers were also much larger than the subject, which consists of only 57,395 SF. Finally, the Board rejects the Cost Approach to value developed by Respondent because replacement cost data from after the statutory date of value was used.

The parties selected several comparable rental properties both within the subject building and nearby in the wider Streets at SouthGlenn complex to support their conclusion of market rent, as part of their respective income approaches to value. But Petitioner's findings were better supported, using strictly new leases from during the statutory 18-month data collection period. Adjustment for the variety of lease structures found here as well as various concessions offered, such as tenant improvements, were made to arrive at a potential gross income at \$27.66 PSF. Using actual operating expenses (without taxes) for the entire complex yielded an NOI at \$18.87 PSF. By loading an OAR at 8.50% and capitalizing the income, Mr. Krump reached a value of just over \$8.3 million. Providing a supported deduction for lease-up costs produced a final estimate at \$8.0 million.

The Respondent relied on leases, some of which had been agreed to in 2013, even though indications of value from newer leases were available, closer to the subject's date of value. Those newer leases showed that tenants were able to demand concessions because of the uneven performance in the larger complex. By treating the reported rental rates strictly on a net effective basis, a 10% rate for operating expenses was selected, although it was well below what budgeted expenses for the complex showed. While Mr. Chase used an unloaded OAR of 8.00%, a similar rate to Mr. Krump's, the resulting indication does appear to overstate the value.

By supplying more comparable building sales and rental comparable data, better supporting what the actual income and expenses were for the property and accounting for its lease up costs, the Board concludes that Petitioner met its burden of proving that the assigned value for

tax years 2017 and 2018 is incorrect. The Board finds the evidence presented showed that the correct value for these years is \$8,000,000.

ORDER

The petition is **GRANTED**. The Arapahoe County Assessor's Office 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 23rd day of June 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



John F. DeRungs

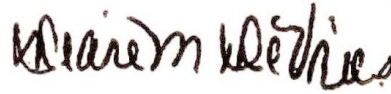


I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.



Casie Stokes

Concurring Board Member:



Diane M. DeVries

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