

**BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 36960**

ORDER

MARK E. KALINOSKI,

Petitioner,

vs.

ADAMS COUNTY BOARD OF COMMISSIONERS,

Respondent.

THIS MATTER was heard by the Board of Assessment Appeals on January 19, 2001, Mark R. Linné, Harry J. Fuller, and Karen E. Hart presiding. Petitioner appeared on his own behalf. Respondent was represented by Jennifer Wascak Leslie, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**BK 4440 PG 900 LOT 2 BLK2 MINOR SUBD OF LOT 2 BLK 2
WEBSTER LAKE SUBD 3D FLG
(Adams County Schedule No. R0031076)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 1999. The subject property consists of a multi-tenant 2-story building built in 1987, and consisting of 22,142 square feet on 76,761 square feet of land.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued due to Respondent's use of an incorrect capitalization (cap) rate in the income approach. The use of a higher cap rate is supported by the comparable sales.

Respondent:

Respondent contends that the subject property was properly valued using all three approaches to value.

FINDINGS OF FACT:

1. Petitioner presented the following indicators of value:

Income: \$910,500.00 to \$1,062,250.00

2. Petitioner presented two comparable sales ranging in sales price from \$28.61 to \$31.32 per square foot and in size from 19,910 to 39,495 square feet. No adjustments were made to the sales.

3. Mr. Kalinoski testified that his first comparable is the Malley Center located at 112th and Malley. It is anchored by Safeway and is the nearest shopping center; it is just 2 blocks away from the subject property. It sold on June 27, 1996 for \$1.3 million or \$28.61 per square foot. He feels that this property probably experiences more traffic in a day than his property does in a week. He pointed out that Respondent has valued his property at a much higher value of \$60.00 per square foot.

4. Mr. Kalinoski presented a second comparable sale known as the Hissom Washington Center, located at the northeast corner of 120th and Washington Street. It sold on July 29, 1999 for \$31.32 per square foot. It is a corner property and the traffic count is 56,000 cars a day, more than 3 times that at his location.

5. Petitioner did not indicate a value conclusion based on the market approach to value.

6. Mr. Kalinoski testified regarding the Respondent's comparables. Regarding Comparable 1, the building size is only 7,120 square feet. There was a low down payment of only 8% rather than a typical 30% down, which would skew the sales price. Comparable 2 is only 4,560 square feet in size and is much smaller than the subject property. He spoke with both the seller and realtor and the sales price included the business, personal property, and real estate. Comparable 3 sold at a cap rate of 12% and has a rental rate similar to his. Comparable 4 has higher rents than his property. He contacted the listing broker who said the buyer grossly overpaid, as they needed it for access to an adjacent property. Comparable 5 has higher rents than the subject property and sold at a cap rate of 10.94, rounded to 11%. The population counts and the average household income levels are higher. It is located on the corner of Illiff and Chambers Road. The traffic counts are 30,000 vehicles per day on Chambers Road and 37,000 vehicles per day on Washington Street. His property has a total traffic count of 17,000 vehicles per day. The comparable is a much better location and sold for a higher cap rate than what has been used by Respondent for the subject property.

7. Petitioner presented an income approach to derive a value range of \$910,500.00 to \$1,062,250.00 for the subject property.

8. Mr. Kalinoski testified that he is in agreement with the net income used by Respondent for the income approach, but he does not agree with the cap rate. He believes a more correct cap rate would be in the range of 12% to 14%. He bases this rate on the cap rates of some of the comparable sales.

9. Petitioner did not present a cost approach to value. However, Mr. Kalinoski testified that he does not feel Respondent's replacement cost is correct.

10. Under cross-examination, Mr. Kalinoski clarified that the rental rate of \$6.00 per square foot for the subject property is a net rent, not gross. Regarding Respondent's Comparable 2, he admitted that the Yorktown Food Mart portion of the property may have been closed at the time of sale, but he is aware that the Laundromat was operating.

11. Upon questioning from the Board, Mr. Kalinoski reiterated that Respondent's Comparable 2 included laundry equipment. He has owned the subject for 5 or 6 years. The subject property was 50% vacant when he took it over; he had to make deals to get people to lease. It is still not 100% occupied. There are 5,000 square feet of office area, which are occupied by Cruise Holiday, Ellsworth Realty, and Classified Credit Union. The office space rents for less than the retail space. He does not know the average rent for office versus retail space. He believes his property is worth less than \$1 million. He admitted he has good tenants. He was unclear as to the exact vacancy rate for the subject property for 1997 and 1998.

12. Petitioner is requesting a 1999 actual value of less than \$1,000,000.00 for the subject property.

13. Respondent's witness, Terry Blake, a Registered Appraiser for the Adams County Assessor's Office, presented the following indicators of value:

Market:	\$1,400,000.00
Cost:	\$2,041,250.00
Income:	\$1,275,000.00

14. Mr. Blake testified that he is familiar with the property. Petitioner purchased the property as an REO on December 19, 1994, for \$730,000.00.

15. Based on the market approach, Respondent's witness presented an indicated value of \$1,400,000.00 for the subject property.

16. Respondent's witness presented 5 comparable sales ranging in sales price from \$45.65 to \$72.37 per square foot and in size from 4560 to 19,910 square feet. After adjustments were made, the sales ranged from \$56.65 to \$85.45.

17. Mr. Blake described each of his sales, which were adjusted for differences in year of construction, type and quality of construction, building size, and location. Comparable 1 consists of cinder block construction versus the subject property steel frame with exterior brick construction. Comparable 5 has the most similar tenants to the subject property. The indicated value for the subject property is \$64.74 per gross square foot or \$1,433,554.00, rounded to \$1,400,000.00.

18. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$2,041,249.00.

19. Mr. Blake testified that the property was valued using the Marshall & Swift cost manual. The subject property was built in 1987. It was valued as a multi-tenant retail shopping center with an elevator and paving. A physical depreciation of 18% was applied to the replacement cost new. A land value of \$5.00 per square foot was added to the replacement cost new less depreciation. Mr. Blake testified that he did not place much weight on the cost approach.

20. Respondent's witness used the income approach to derive a value of \$1,275,000.00 for the subject property.

21. Mr. Blake testified that he placed the most weight on the income approach. He used the Scott, Stahl, Burbach & Decker survey to establish the cap rate of 10%. The indicated cap rate range was 8.5% to 11%, with the high end of the range representing older properties. He believes Petitioner's requested cap rate would be too high considering the age of the property.

22. Mr. Blake testified that he arrived at a net operating income of \$6.07 per square foot net, which was capitalized at 10% to arrive at an indicated value of \$1,275,000.00.

23. Mr. Blake concluded to a value of \$1,275,000.00, with the most weight given to the income approach.

24. Mr. Blake testified that he has reviewed Petitioner's exhibits. Regarding the Malley Center sale, Adams County had purchased the building for occupancy by Social Services. It then traded the property to Sussex for a building located at 7401 Broadway. This transaction was not a market sale; it involved a trade.

25. Under cross-examination, Mr. Blake clarified that the market rents listed on page 11 of his report are net rents to the owner.

26. Upon questioning from the Board, Mr. Blake testified that the tax expense of \$40,940.00 shown in his income approach calculation was a potential tax amount, not an actual expense. His cap rate does not reflect a tax rate. It is the same cap rate that is applied to other strip malls in the area. He would give 30% weight to the market approach. His adjustments are based on market sales analysis. His cost approach is effective as of June 30, 1998. The actual vacancy rate was 27%.

27. Upon questioning from the Board, Mr. Blake testified that the indicated cap rate of 10.94% for Comparable 3 reflects that the property is a cinder block building and has only one lane access on 84th Avenue. The cap rate of 12% for Comparable 5 is typical for a building of its age, which is older than the subject property. The actual tax rate for the property is 3.3%. The mill levy is 114.

28. Under recross-examination, Mr. Blake admitted that he submitted no supporting documentation regarding the Malley Center sales information.

29. Respondent assigned an actual value of \$1,275,670.00 to the subject property for tax year 1999.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 1999 valuation of the subject property was incorrect.

2. Regarding the cost approach, Petitioner did not present a value via this approach and Respondent did not place much weight on this approach. The Board agrees that the cost approach should be given little consideration for the subject property value.

3. Regarding the market approach, the Board placed little weight on Petitioner's comparable sales. Petitioner's sales information lacked detailed information regarding the properties. The sales therefore could not be adjusted for differences in physical characteristics. In addition, Petitioner's Hissom Washington Center sale occurred more than one year after the level of value date of June 30, 1998.

4. However, the Board also could not place much weight on Respondent's comparable sales. Two of Respondent's sales had building sizes of less than half the size of the subject property, yet the size adjustment was only 5%. Four of the sales had land sizes that were from 25% to 75% the size of the subject property, yet no adjustments were made for site size. The Board notes that no adjustments were made for time. The Board found a lack of supporting documentation for the adjustments made to the sales. In addition, the Board believes that a potential purchaser would rely most upon the income approach to value for income producing properties.

5. Regarding the income approach, Respondent's treatment of property taxes is not an accepted ad valorem appraisal method. Property taxes may be handled in one of two ways: deducted as an expense or added to the capitalization rate. If the taxes are deducted as an expense, they must reflect actual expenditures. A projected amount of taxes can not be used. Typically, the Board sees property taxes accounted for in the cap rate. This is a more accurate reflection of value, as the purpose of ad valorem valuation is to determine property tax amounts. The Board removed the tax expense from Respondent's income approach calculation, then added a 3.3% effective tax rate to the base capitalization rate.

6. Regarding the base capitalization rate, the Board believes that a base rate of 11% would be more appropriate. Two of the comparable sales presented in this case indicated actual market derived cap rates of 10.94% and 12%. The Board prefers to use market derived cap rates when available, and notes that an 11% rate still falls within the range of 8.5% to 11% as indicated in to the Scott, Stahl, Burbach & Decker survey.

7. The Board added the 3.3% effective tax rate to the base cap rate of 11% and concluded to a tax loaded capitalization rate of 14.3%. The Board then applied this rate to the adjusted net income of \$168,420.00 to arrive at a value of \$1,177,762.00.

8. The Board concluded that the 1999 actual value of the subject property should be reduced to \$1,177,762.00, with \$307,034.00 allocated to land and \$870,728.00 allocated to improvements.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 1999 actual value for the subject property of \$1,177,762.00.

The Adams County Assessor is directed to change his records accordingly.

APPEAL:

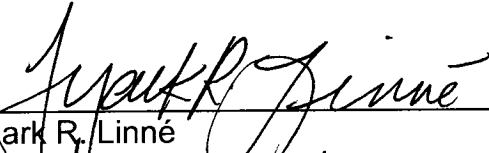
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 24th day of January, 2001.

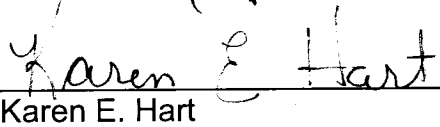
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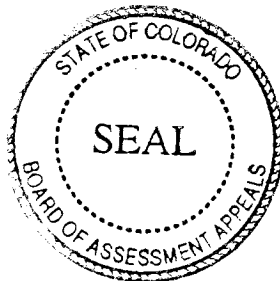
This decision was put on the record

JAN 24 2001

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



Diane Von Dollen



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