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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>BARBARA ANNE CARNEY TRUST, ET AL,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p> | |
| <p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Beldon Wright, Property Tax Advisors, Inc. Address: 3090 South Jamaica Court, #204 Aurora, Colorado 80014 Phone Number: (303) 368-0500 E-mail: Attorney Reg. No.:</p> | <p>Docket Number: 37325</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on June 22, 2001, Debra A. Baumbach, J. Russell Shaw, and Karen E. Hart presiding. Petitioners were represented by Beldon Wright, Agent. Respondent was represented by Laurie J. Heydman, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOTS 1-20 INC BLK 34 HUNTS ADD
(Denver County Schedule No. 05044-6-022-000)**

Petitioners are protesting the 2000 actual value of the subject property, a masonry warehouse consisting of 56,160 square feet, constructed at varying dates between 1927 and 1971. The land size is 62,650 square feet.

ISSUES:

Petitioners:

Petitioners contend that the subject property value should be reduced based on his rental rate study. His market income approach value conclusion is supported by the subject property actual income and expenses. Respondent's income approach is based on non-verifiable rents.

Respondent:

Respondent contends that the subject property was correctly valued using all three approaches to value, with the most weight placed on the income approach. The value conclusion of all three approaches resulted in a stable range. Petitioners' Rent Comparables 2, 3, and 8 are from the same area as the subject property and support Respondent's rental rates.

FINDINGS OF FACT:

1. Petitioners' witness, Mr. Beldon Wright, of Property Tax Advisors, Inc., presented the following indicator of value:

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| Income: | \$1,009,200.00 (using market rents) |
| Or | \$ 799,100.00 (using actual subject property rents) |

2. Mr. Wright testified that the subject property is a warehouse located at 860 Navajo Street. It consists of 3 or 4 interconnected buildings built between 1927 and 1971. The building square footage is 56,160 and the land size is 62,650 square feet. The land-to-building ratio is 1.1:1.

3. Petitioners' witness did not present a market or cost approach to value for the subject property. He could not find any sales in the market approach due to the configuration of the buildings. He did not calculate a cost approach due to the age of the buildings.

4. Petitioners' witness used the income approach to derive a value of \$799,100.00 for the subject property based on the actual rent roll.

5. Mr. Wright testified that the rent rolls were for 1998 and 1999. There was no vacancy during those years. He also presented a Schedule E from 1997 and 1998. The income was annualized to June 30, 1998. He used a capitalization rate of 10% with an effective tax rate of 2%.

6. Petitioners' witness used the income approach to derive a value of \$1,009,200.00 for the subject property based on market rents.

7. Mr. Wright testified that he conducted a market rent analysis of buildings ranging from 33,844 to 100,340 square feet. The rents ranged from \$1.85 to \$3.85 per square foot. All the rents were triple net. He used an indicated market rent of \$2.25 per square foot. He used a vacancy rate of 5%, as well as a 5% expense rate. His 11.3% capitalization rate is the same rate used by Respondent.

8. Under cross-examination, Mr. Wright testified that he did not dispute the land value. He used market rents in his second income approach calculation. He considered size, age, wall height, and location in selecting his market rental comparables. The subject is not in a true industrial area; it is close to a residential area. He believes the rent roll leases are gross leases (triple net).

9. Upon questioning from the Board, Mr. Wright testified that the rent roll showed no dollar contribution for CAM and taxes, which is why he believes they are gross leases.

10. Petitioners are requesting a 2000 actual value of \$1,009,200.00 for the subject property.

11. Respondent's witness, Mr. Timothy K. Muniz, a Certified General Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

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| Market: | \$1,176,600.00 |
| Cost: | \$1,046,100.00 |
| Income: | \$1,163,500.00 |

12. Mr. Muniz testified that Exhibit 1 is his appraisal report. The tax year at issue is 2000, which is the same value as tax year 1999. He inspected the property on June 5, 2000. The subject property has an average year of construction of 1956, consists of 56,160 square feet, and is in average condition. The site is 62,650 square feet in size with an industrial 1 zoning.

13. Based on the market approach, Respondent's witness presented an indicated value of \$1,176,600.00 for the subject property.

14. Respondent's witness presented 4 comparable sales ranging in sales price from \$19.22 to \$26.94 per square foot and in size from 28,364 to 59,836 square feet. After adjustments were made, the sales ranged from \$20.95 to \$22.63 per square foot.

15. Mr. Muniz described each of his 4 comparable sales, including the year of construction, size, wall height, office area, and land to building ratios. The comparable sales adjustments for physical, functional and economic factors ranged from -16% to +9%. Sale 4 is closest in proximity to the subject property. He considered Comparable 2 to be the best sale. It is on the same size parcel, with some extra land. The building is similar in age and was constructed in various stages, like the subject. It is very similar to the subject property. He correlated to Comparable 2 at a value of \$20.95 per square foot, or \$1,176,600.00.

16. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,046,100.00, with \$223,200.00 allocated to land, and \$822,900.00 allocated to the improvements. Mr. Muniz testified that although he prepared a cost approach, he considered the subject property to be too old for a value conclusion via the cost approach to be relevant.

17. Respondent's witness used the income approach to derive a value of \$1,163,500.00 for the subject property.

18. Mr. Muniz testified that he used a 10% vacancy rate, with expenses being 13% of the effective gross income. He does not use the subject property actual income in an income approach model. His rent rate is \$2.99 per square foot. The cap rate is 11.3%,

19. Mr. Muniz testified that he did a market rent analysis of 4 properties, all located in the same area as the subject. They ranged from \$3.14 to \$5.50 per square foot and in size from 20,000 to 50,000 square feet. His net adjustments ranged from -1% to -37%. The adjusted rent rate range was \$2.87 to \$3.52 per square foot. Mr. Muniz testified that his rental rate of \$2.99 per square foot falls within the range.

20. Mr. Muniz testified that Petitioners' Rent Comparables 1, 2, 4, 5, 6, and 7 are located in different neighborhoods than the subject, which should not be used, as other neighborhood rents may not be reflective of the subject. He visited Petitioners' Market Rent Comparables 2, 3, and 8. Comparable 2 is superior to the subject. Comparables 3 and 8 are similar to the subject in age and condition; however, Rent Comparable 8 is a larger building, he is not sure the listed square footage reflects the entire building.

21. Mr. Muniz testified that he calculated an income approach using the actual rent from the subject property rent rolls of \$117,000.00, Petitioners' 5% vacancy and collections figure, and 5% expenses. He capitalized the resulting net income of \$105,593.00 with a 9.35%, non-tax loaded cap rate, resulting in a value of \$1,129,300.00.

22. Mr. Muniz testified that, as the subject property actual vacancy rate was zero, he also calculated an income model using zero vacancy, and 5% expenses. He capitalized the resulting net income of \$111,150.00 with a 9.35% non-tax loaded cap rate and arrived at a value of \$1,188,800.00 for the subject property, which is higher than the assigned value.

23. Mr. Muniz testified that there was nothing in Petitioners' exhibit to cause him to change his opinion. For triple net leases he would deduct the 1.9% tax rate and use 9.35% for the cap rate. Mr. Muniz feels the assigned value is correct.

24. Mr. Muniz testified that he had reviewed Petitioners' Exhibit A. He did not think Petitioners' expenses were reasonable, and no documentation was given to him to support those expenses. The Petitioners' cap rate is higher than Respondent's, which was derived from sales: net operating income before taxes divided by the sales price. Respondent's cap rate was confirmed by published sources and is the typical cap rate used by them for warehouse property. Petitioner loaded his cap rate with the tax rate, which should not be added if the leases are triple net; it would only be appropriate for gross leases.

25. In cross-examination, Mr. Muniz testified that in a triple net lease, the tenant pays the taxes. The federal income tax Schedule E form indicates that the taxes are being expensed by Petitioners. He testified that the leases might not be gross; they could be standard. In the market approach, he correlated to Comparable Sale 2, which he admitted has a year of construction of 1995, is a concrete block building with brick outer walls, and also has some concrete tilt-up and metal walls. Regarding his income approach rent analysis, he believes his rents are accurate.

26. Upon questioning from the Board, Mr. Muniz testified that he reconciled his value to the income approach. He explained how he derived his adjustments; they are subjective. The purpose of his alternate income analysis is to show that the actual income from the rent rolls should result in a higher value than Petitioners' market rent calculation.

27. Under redirect, Mr. Muniz testified that although his adjustments were subjective, they were based on his experience.

28. Respondent assigned an actual value of \$1,163,500.00 to the subject property for tax year 2000.

CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2000.

2. Both parties agreed, and the Board concurs, that the cost approach should be given little or no consideration, due to the age and configuration of the subject property buildings.

3. Petitioners presented no market approach to value. Respondent presented a market approach, but correlated to the income approach for the value conclusion. Therefore, the Board also gave the most weight to the income approach.

4. It was not in dispute that market information should be used to value the subject property, although both parties prepared market approaches based on various scenarios involving actual subject property information.

5. Petitioners presented 8 rent comparables for the Board's consideration. However, there was little detail available regarding the physical characteristics of each comparable. There was a wide rental range of \$1.85 to \$3.85 per square foot. No adjustments were made to the rental rates, with Petitioners' witness choosing to merely rank the rents according to comparability as to whether they were inferior, equal, or superior. As a result, the Board considered but gave lesser weight to these comparables.

6. Respondent presented 4 rent comparables for the Board's consideration. Upon review, the Board observed that three of the rent comparables had substantially more office area than the subject; Comparable 1 was not adjusted for this difference, and the other 3 comparables appeared to be under-adjusted. The Board used a standardized adjustment grid and recalculated the rents with a resulting adjusted rental rate range of \$2.49 to \$2.96 per square foot. The Board gave more weight to these comparables as they had detailed information regarding physical characteristics, though they were lacking in specific property identification.

7. The Board carefully considered and reviewed all of the presented rent comparables, as well as noting the actual subject property rents, which ranged from \$1.88 to \$2.25 per square foot. Based on the age and configuration of the subject property buildings, the Board concluded that a rental rate from the lower end of the ranges would be most appropriate.

8. The Board used \$2.60 per square foot as a market rental rate, as well as Respondent's 10% vacancy and collection loss, 13% expense ratio, and 11.3% cap rate, to conclude to an actual value via the income approach of \$1,011,775.00.

9. The Board agrees with both parties that the income approach should be given the most weight. The Board concluded that the 2000 actual value of the subject property should be reduced to \$1,011,775.00, with \$223,200.00 allocated to land and \$788,575.00 allocated to improvements.

ORDER:

Respondent is ordered to reduce the 2000 actual value of the subject property to \$1,011,775.00, with \$223,200.00 allocated to land and \$788,575.00 allocated to improvements.

The Denver 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 Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 1st day of August, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

J. Russell Shaw
J. Russell Shaw

Karen E. Hart
Karen E. Hart

This decision was put on the record

AUG 01 2001

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

Diane Von Dollen
Diane Von Dollen



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| BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 | |
| Petitioner: BARBARA ANNE CARNEY TRUST, ET AL, v. Respondent: DENVER COUNTY BOARD OF EQUALIZATION. | |
| Attorney or Party Without Attorney for the Petitioner: Name: Beldon Wright, Property Tax Advisors, Inc. Address: 3090 South Jamaica Court, #204 Aurora, Colorado 80014 Phone Number: (303) 368-0500 | Docket Number: 37325 |
| ORDER (ERRATA) | |

The Board received a call from Respondent on August 7, 2001. Based on the Board's review of this Order, the Board hereby issues this Order on Errata. The Board hereby amends its August 1, 2001 Order to reflect the following:

Under **PROPERTY DESCRIPTION** is hereby amended to read:

(Denver County Schedule No. 05044-16-022-000)

In all other respects, the August 1, 2001 Order shall remain in full force and effect.

DATED this 8th day of August, 2001.

BOARD OF ASSESSMENT APPEALS

This decision was put on the record

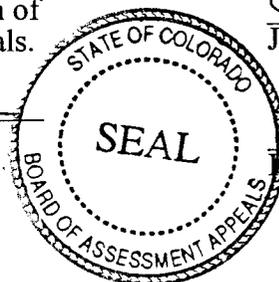
AUG 08 2001

Debra A. Baumbach
Debra A. Baumbach

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

J. Russell Shaw
J. Russell Shaw

Diane Von Dollen
Diane Von Dollen



Karen E. Hart
Karen E. Hart