

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FRANK BENTON LAND & LVSK BY KMART CORP.,</p> <p>v.</p> <p>Respondent:</p> <p>MONTROSE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Barry J. Goldstein, Esq. Address: 950 South Cherry Street, #320 Denver, Colorado 80246 Phone Number: (303) 757-8865 E-mail: Attorney Reg. No.: 2218</p>	<p>Docket Number: 38640</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 22, 2002, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Barry J. Goldstein, Esq. Respondent was represented by James R. Fritze, Esq. The hearing was conducted via teleconference with both parties.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOT 1 K MART SUB 34-49-9 C
(Montrose County Schedule No. R0650996)**

Petitioner is protesting the 2001 actual value of the subject property, a 40,260 square foot former Kmart store built in 1997 of block construction and located in Montrose, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property is a former Kmart store built in 1977 and consisting of 40,260 square feet. The income approach is the most appropriate approach to value. Respondent also relied upon the income approach; however, Respondent's expenses and capitalization rates are too low, and the market rent rate is too high, resulting in an overvaluation of the subject property.

Respondent:

Respondent contends that the subject property was correctly valued using the income approach to value, with support from the cost approach. Respondent is more familiar with the local market than Petitioner. The actual lease rental rate for the subject property should be considered, and the property owner's expenses are minimal. Respondent's capitalization rate was established using published sources for properties located in areas similar to the subject, not based on national data such as that used by Petitioner's witness.

FINDINGS OF FACT:

1. Petitioner's witness, Ms. J. P. Rand, Senior Valuation Consultant for Burr Wolff LP, presented the following indicator of value:

Income:	\$741,200.00
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2. Petitioner's witness did not present an indicated value for the subject property using either the cost approach or the market approach.

3. Ms. Rand testified that she represents Kmart in various locations in the United States and was aware of a number of sold properties. However, the sales were all leased fee and only fee simple market sales should be used to value the subject property. She could not find any market sales in Colorado or surrounding areas.

4. Regarding the cost approach, Ms. Rand testified that the approach works well in newer buildings. However, due to the subject property age and lack of market demand for a discount store of this size, she did not consider this approach reliable. It would be difficult to measure depreciation, especially economic obsolescence. It would be purchased for its income ability.

5. Ms. Rand testified that Kmart built three similar stores in rural areas at the same time. The subject property closed in 1990 and was vacant until 1992, at which time it was subleased to ConAgra for a Country General retail store. The Kmart lease rate was \$2.73 per square foot; it was subleased at a rent rate of \$1.43 for the initial rate, with step-ups built into the lease to a current rate of \$1.93. Kmart was responsible for the original lease rate and had to pay the rent difference to the property owner.

6. Ms. Rand testified that the subject property was occupied on January 1, 2002 but has since been vacated. It has 40,260 square feet of building area.

7. Petitioner's witness presented an income approach to derive a value of \$741,200.00 for the subject property.

8. Ms. Rand testified that it was difficult to determine a market rent, as there are few properties of this size and age. She located a lease in Cortez, Colorado, that was for a former Kmart store that was the same age and size as the subject. The lease was executed in July of 2000 for \$1.50 per square foot, and was leased for use as a used car lot. This was the only lease she could find on a similar size and age store.

9. Ms. Rand testified that she felt that a fair rent for the subject property was somewhere between \$1.50 and \$2.73 per square foot, considering the subject condition and market conditions. She used \$2.50 per square foot for a market rent. She used a 5% vacancy rate, which was the same rate used by the Respondent. For expenses, she used published sources for neighborhood type shopping centers in the West sector. She used \$0.35 per square foot.

10. Ms. Rand testified that she used published sources to determine her capitalization rate. These publications showed a broad range of rates. She considered the background, location, age, and circumstances of the subject property, and chose an 11% capitalization rate. The subject property is old, a square-box shape, and needs upgrading and repairs.

11. Under cross-examination, Ms. Rand testified that she has not conducted a physical inspection of the subject property. She has seen pictures of the store and is familiar with other similar Kmart properties. She last visited Montrose 12 years ago. She has familiarized herself with Montrose demographics, master plan, and other community information.

12. Petitioner is requesting a 2001 actual value of \$741,200.00 for the subject property.

13. Respondent's witness, Mr. Bradley B. Hughes, a Certified General Appraiser and Chief Appraiser with the Montrose County Assessor's Office, presented the following indicators of value:

Cost:	\$1,436,000.00
Income:	\$1,100,000.00

14. Respondent's witness did not present an indicated value using the market approach to value for the subject property. Mr. Hughes testified that he did not find sufficient comparable properties to allow a calculation of value for the subject property using the market approach.

15. Mr. Hughes testified that the subject property land size is 4.233 acres and the building size is 40,260 square feet. He physically inspected the subject property. The CAMA system was used to originally value the subject property at \$1,517,840.00. The subject property was encumbered by a long-term lease as of the assessment date.

16. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,436,000.00.

17. Mr. Hughes testified that he does not believe the cost approach gives a good indication of value for the subject property. However, he had good land sales. The subject is a block structure with single tenant configuration. He felt it was a useable property. He felt that the higher indicated value as compared to the income approach was probably due to the difficulty in calculating depreciation.

18. Respondent's witness used the income approach to derive a value of \$1,100,000.00 for the subject property.

19. Mr. Hughes testified that he used a rent rate of \$2.73 per square foot, which is the contract rent for the subject property. He used a 5% vacancy rate, 5% for operating expenses, and a capitalization rate of 9%.

20. Mr. Hughes testified that he looked for rent comparables in Montrose and surrounding counties. There is a 28,500 square foot building located across the street from the subject which is leased at \$5.00 per square foot. It is a modified gross lease, and he had difficulty in obtaining detailed lease information.

21. Regarding the operating expenses, Mr. Hughes testified that there is very little expense to the owner. The tenant, Kmart, pays all of the expenses. The property owner was only required to pay liability insurance and a minimal management fee; the subject property is a single-tenant property with no maintenance on the owner's part.

22. Regarding the capitalization rate, Mr. Hughes testified that he used published surveys; however, unlike the Petitioner's witness, who used a national survey, he used a regional survey, which includes properties in closer location to the subject. He used Freestanding Retail and Big-Box retail property types to choose his capitalization rate. There was an indicated 10% rate overall, but he looked most closely at the reported properties located in Grand Junction, which indicated a 9% capitalization rate. He spoke to Mr. Burbach, of the Integra Survey, who indicated the subject property should be considered a Big-Box retail property due to its large square footage. He did not include copies of the rate surveys in his report; only a summarized portion.

23. Mr. Hughes concluded to a value of \$1,100,00.00.

24. Regarding the Cortez lease, Mr. Hughes testified that his information came from the broker of the property, which is currently for sale. Kmart is subleasing the property for a substantial amount less than the actual lease rate.

24. Mr. Hughes does not believe the subject property should be considered a neighborhood shopping center; it is not a building with multiple tenants with varying lease rates, which would require higher management rates. The subject property is a single-tenant property. He discounted the sublease as he did not have sufficient information to determine if the rates were bulk rates or not, as Country General leased several properties on the western slope.

25. Under cross-examination, Mr. Hughes testified that he relied on the contract rent. In the case of the subject sublease, he does not believe it is near market lease rates; the lease was entered into 8 years ago. He is required to analyze actual rent for long-term leases. He is not looking at the Kmart leasehold interest; he is valuing the owner's real estate interest. He looked at the actual data of the subject; the original lease required all repairs and maintenance to be the responsibility of the tenant; the sublease permit indicated that the subtenant was responsible for the expenses. He believes that the tenant would be responsible for the replacement of the roof, if necessary. The subject property was encumbered by a 25-year lease, which had 10, 5-year renewal options. Any leasing commissions would be included in his expense rate.

26. Under cross-examination, Mr. Hughes testified that by considering the class of the property as a Big-Box Retail store, and also considering the Grand Junction data, he chose 9% for a capitalization rate. Big-Box Retail is a fairly new classification in the Integra reports. The subject property would not be considered freestanding due to its large square footage. He believes that the investors in Grand Junction would be the same as investors in Montrose. He admitted that the City of Grand Junction is three times larger in population than Town of Montrose. He believes there is less competition in smaller communities, and the supply and demand is such that there is a higher occupancy in these buildings. He admitted that the age of the building could be a factor in the capitalization rate.

27. Respondent assigned an actual value of \$1,517,840.00 to the subject property for tax year 2001, but is recommending a reduction in the value to \$1,100,000.00.

28. In rebuttal, Ms. J. P. Rand pointed out that the actual Integra report was not included in Respondent's appraisal report. She believes that the Colorado Integra report analyzes and reports the risk rate. She does not believe that the expenses allowed by Respondent are large enough for a property of the subject age. She believes that a prudent buyer would require a much higher return than the 9% capitalization rate used by Respondent.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board was convinced that Respondent's capitalization rate was incorrect. The subject property is an older building located in a smaller, rural town than those properties listed in the Respondent's Integra report exhibits. The Board was not convinced that investors would consider properties located in Montrose to be at the same risk level as those located in Grand Junction, a city with a much larger population and direct access on Interstate 70. The Board believes that Ms. Rand's 11% capitalization rate is more accurate for the subject property, reflecting the subject property age, location, condition, and overall higher risk rate.

3. The Board was convinced that the subject property's actual lease rate paid to the owner should be used for the valuation of the subject, as it was a guaranteed, long-term lease in place as of the assessment date. The Board was persuaded by the Respondent's witness that any expenses to the owner were minimal under the lease provisions. The Board accepts Respondent's income calculations in total, with the exception of the capitalization rate. A

recalculation of Respondent's income approach using an 11% cap rate results in a value of \$902,500.00.

4. Neither party presented a market approach value. The Board placed little weight on Respondent's cost approach due to the age of the property, and agrees with Mr. Hughes' testimony admitting that this approach is not a good indicator of value for a property of the subject's age, due to the difficulty in determining proper depreciation factors.

5. After careful consideration of all the evidence and testimony presented, the Board concluded that the 2001 actual value of the subject property should be reduced to \$902,500.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$902,500.00.

The Montrose County Assessor is directed to change her 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 2nd day of May, 2002.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E. Hart
Karen E. Hart

This decision was put on the record
MAY 01 2002

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

