

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	
<hr/> Petitioner:  <b>SAFEWAY STORES 45, INC.,</b>  v.  Respondent:  <b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b>	
Attorney or Party Without Attorney for the Petitioner:  Name: Clifton D. Hypsher, Esq. Address: 3780 South Broadway Englewood, Colorado 80113 Phone Number: (303) 806-5104 Attorney Reg. No.: 20855	<b>Docket Numbers: 41448 and 41449</b>
<b>ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 22, 2004, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Clifton D. Hypsher, Esq. Respondent was represented by Michelle Gombas, Esq. Petitioner is protesting the 2003 actual value of the subject properties.

**PROPERTY DESCRIPTION:**

The subject properties are described as follows:

**Docket Number 41448:**  
**9255 S. Broadway, Highlands Ranch, Colorado**  
**(Douglas County Schedule No. R0405559)**

**Docket Number 41449:**  
**11051 S. Parker Road, Parker, Colorado**  
**(Douglas County Schedule No. R0381113)**

The property located at 9255 S. Broadway is a 55,807 square foot supermarket and the property located at 11051 S. Parker Road is a 61,810 square foot supermarket. Both properties are occupied by the owner, Safeway Stores.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject properties have been overvalued for tax year 2003. While both parties included two of the same comparable sales in their analyses, the Petitioner and Respondent disagree regarding the adjustments to these sales. Further, the Petitioner based its income approach on actual rental information for comparable Safeway stores, while the Respondent used rental rates of non-supermarket properties.

### **Respondent:**

Respondent contends that the subject properties have been valued correctly. While both parties used two of the same comparable sales, they differ on adjustments for location and quality. The comparables used by the Petitioner to determine market rent are in dispute based on location.

## **FINDINGS OF FACT:**

1. Both parties stipulated to the use of the income and market approaches, with no consideration given to the cost approach.

2. Petitioner's witness, Mr. Dan George, a Registered Appraiser with 1<sup>st</sup> Net Real Estate Services, Inc., presented the following indicators of value for 9255 South Broadway:

Market:	\$4,650,000.00
Income:	\$4,640,000.00

Mr. George presented the following indicators of value for 11051 South Parker Road:

Market:	\$5,150,000.00
Income:	\$5,140,000.00

3. Mr. George presented three comparable sales in the market approach, with sales prices ranging from \$74.98 to \$94.88 per square foot. Sale 1 was a former Cub Foods store that was purchased by Dillon Companies for use as a King Soopers supermarket. The purchase price was \$90.13 per square foot. The sale closed in October 2002; however, Mr. George testified that the sale had been negotiated during the 18-month base period. Mr. George made an upward adjustment for

time and a 5 percent downward adjustment for location, to arrive at an adjusted price of \$86.08 per square foot.

4. Petitioner's Sale 2 is a retail warehouse located at 7848 County Line that sold for \$94.88 per square foot in April 1999. Mr. George made a downward adjustment for time and a 5 percent downward adjustment for location, resulting in an adjusted sales price of \$85.80 per square foot.

5. Petitioner's Sale 3 is a larger retail warehouse located at 9697 County Line Road. The purchase price was \$74.98 per square foot, with a January 2002 closing date. Mr. George made a downward adjustment for time, a 10 percent upward adjustment for the larger building size and a 5 percent downward adjustment for superior location. After adjustments, the sales price was \$77.97 per square foot.

6. Based on the market approach, Mr. George concluded to a value of \$83.29 per square foot for both of the subject properties.

7. Mr. George presented four comparable rental properties for comparison in the income approach. Three of the comparables are Safeway stores with rental rates ranging from \$7.05 to \$8.29 per square foot. Rent Comparable 1 is located in Boulder, Rent Comparable 2 in Lakewood and Rent Comparable 3 in Pueblo. Rent Comparable 4 is a retail warehouse at 2255 E. County Line Road with a rental rate of \$8.54 per square foot. The Petitioner's witness concluded to a rental rate of \$7.95 per square foot for both of the subject properties.

8. In his income analysis, Mr. George made a 3 percent deduction for vacancy, in addition to a 3 percent deduction for management and reserves for replacement. A 9 percent capitalization rate was selected based on a summer 2002 investor survey.

9. Based on the income approach, Petitioner's witness presented an indicated value of \$5,140,000.00 for 11051 South Parker Road and an indicated value of \$4,640,000.00 for 9255 South Broadway.

10. Respondent's witness, Mr. Mike Shafer, a Certified Residential Appraiser with the Douglas County Assessor's office, presented the following indicators of value for 9255 South Broadway:

Market:	\$5,859,735.00
Income:	\$5,396,744.00

Mr. Shafer presented the following indicators of value for 11051 South Parker Road:

Market:	\$6,490,050.00
Income:	\$5,977,256.00

11. Mr. Shafer presented four comparable sales in the market approach. The Petitioner also used sales 1 and 2. Respondent's Sales 3 and 4 included a building leased to Petsmart located on Wadsworth Boulevard in Arvada and a property leased to King Soopers located on East Smoky Hill Road in Aurora. Mr. Shafer testified that the Petsmart and King Soopers properties were leased at the time of sale. No adjustments were made for the sale of the leased fee interests. The Petsmart sale closed in September 1999 for a purchase price of \$119.48 per square foot. The King Soopers sale closed in March 1997, prior to the 18-month base period, at a sales price of \$102.74 per square foot.

12. Mr. Shafer made no adjustments to any of the comparable sales. He testified that the locations and land sizes of Sales 1 and 2 were comparable to both subject locations; however, both sales were believed to be inferior in quality, indicating a value for the subject of more than \$95.00 per square foot. Mr. Shafer further testified that Comparable Sale 4 was considered equal to the subject in quality, but inferior in location and date of sale, indicating a value for the subject of more than \$103.00 per square foot. Mr. Shafer concluded to a value of \$105.00 per square foot for both of the subject properties.

13. Respondent's income approach included four rent comparables located in Douglas County with rental rates ranging from \$8.67 to \$12.63 per square foot. Mr. Shafer concluded to a rental rate of \$9.25 per square foot for the subject. None of Respondent's rent comparables were grocery stores.

14. Mr. Shafer deducted 3 percent for vacancy and 3 percent for operating expenses. Based on capitalization rates from sales and the Integra Investment Survey, Mr. Shafer concluded to a 9 percent capitalization rate.

15. Based on the income and market approaches, the Respondent's witness presented an indicated value of \$5,400,000.00 for the property located at 9255 South Broadway and an indicated value of \$6,000,000.00 for the property located at 11051 South Parker Road.

16. Mr. Shafer believes that the Petitioner did not make appropriate adjustments to the comparable sales, particularly to Sales 1 and 2, which both parties included in their market approaches. Mr. Shafer testified that 2004 county traffic information indicated that the locations of Sales 1 and 2 were comparable to the subject; however, he is of the opinion that both sales are inferior to the subject in quality.

17. The Respondent's witness testified that the Petitioner's choice of rentals outside of Douglas County was inappropriate, and that the Respondent's choice of comparable rentals more accurately reflected market rent for the subject properties.

18. Respondent assigned an actual value of \$5,300,000.00 to the property located at 9255 South Broadway and an actual value of \$5,844,000.00 to the property located at 11051 South Parker Road for tax year 2003.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject properties was incorrect.

2. Buyers of supermarket properties are typically aware of the purchase prices paid for similar properties, thus the market approach is often used in the valuation of supermarket properties. Rarely do buyers rely on the income approach to determine the fee simple value of a vacant supermarket, as the subject would not be considered to be a good investment on a fee simple basis. For these reasons, the Board placed little weight on the income approaches presented.

3. The Board was convinced that Sales 1 and 2 were most comparable to the subject properties and they corroborate the market value for both of the subject properties. However, Petitioner provided inadequate evidence to support the time or location adjustments made to Sales 1 and 2.

4. Along with the two sales relied on by the Petitioner, the Respondent included two additional sales in their market approach. The Board believes that the Respondent erroneously placed the greatest reliance on Comparable Sales 3 and 4, as both included the purchase of the leased fee interest. Further, the Respondent did not convince the Board that an adjustment for quality was required for Sales 1 and 2.

5. Petitioner's and Respondent's Comparable Sales 1 and 2 indicate a range of value from \$90.00 to \$95.00 per square foot. The Board determined that the subject properties should be valued at \$90.00 per square foot, based on the similar use of Comparable Sale 1.

6. Based on all of the evidence and testimony presented, the Board concluded that the 2003 actual value of the property located at 9255 S. Broadway should be reduced to \$5,022,630.00 and that the 2003 actual value of the property located at 11051 S. Parker Road should be reduced to \$5,562,900.00.

## **ORDER:**

Respondent is ordered to reduce the 2003 actual value of the property located at 9255 S. Broadway (Docket No. 41448) to \$5,022,630.00 and to reduce the 2003 actual value of the property located at 11051 S. Parker Road (Docket No. 41449) to \$5,562,900.00.

The Douglas County Assessor is directed to change his/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 20<sup>th</sup> day of December 2004.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Sondra W. Mercier*

Sondra W. Mercier

This decision was put on the record

DEC 30 2004

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

*Penny S. Lowenthal*  
Penny S. Lowenthal

