

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>HELEN COHEN FAMILY TRUST & ALFRED A. GRAUMAN TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Edward E. Simon, Jr. Address: 1653 Vine Street Denver, Colorado 80206 Phone Number: (303) 394-2001</p>	<p>Docket Number: 43319</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 1, 2004, Debra A. Baumbach and Diane M. DeVries presiding. Petitioners were represented by Edward E. Simon, Jr., Trustee. Respondent was represented by Charles Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**2321 – 2335 E. Ohio Ave. and 799 S. University Blvd., Denver, Colorado
(Denver County Schedule Number 05144-01-015-000)**

Petitioners are protesting the 2003 actual value of the subject property, the Bonnie Brae Ice Cream/Retail Shops located at 2321-2335 East Ohio Avenue and 799 South University Boulevard, Denver, Colorado. The subject property consists of a 5,392 square foot retail strip center on 6,250

square feet of land. A portion of the subject property has University Boulevard frontage and a portion has Ohio Street frontage.

ISSUES:

Petitioners:

Petitioners contend that the main issue of this appeal is the potential gross income of the subject property. Petitioners are not arguing capitalization rate.

Respondent:

Respondent contends that the Petitioner used actual operating income rather than market rents in arriving at the potential gross income of the subject property.

FINDINGS OF FACT:

1. Petitioners' witness, Kenneth Simon, brother of Edward Simon, Trustee, manages the subject property. He has been a Realtor since 1970 and has managed various retail strip centers since 1985.

2. Mr. Simon testified that Comparable Sale 6 shown on page 16 of Respondent's Exhibit 1 is most comparable to the subject property. However, this property has 3,600 square feet of parking whereas the subject property only has on-street parking. The rental rate for Comparable Sale 6 is \$20.00 per square foot.

3. Mr. Simon testified that only 1,000 square feet of the subject property fronts University Boulevard, while the remaining 4,392 square feet fronts Ohio Street. The Respondent valued the University Boulevard frontage at \$15.00 per square foot and the Ohio Street frontage at \$8.00 per square foot.

4. Mr. Simon testified regarding the comparable sales shown on page 4 of Petitioners' Exhibit A. The majority of Petitioners' comparable sales are located on East Colfax Avenue and rental rates ranged from \$8.00 to \$11.75 per square foot.

5. Mr. Simon testified that the Respondent has raised the issue of the ownership of the subject property. Two trusts own the subject property. There is no rent reduction on the subject property. The subject property has experienced steady rate increases since the property was leased.

6. On cross-examination, Mr. Simon testified that the Petitioners' comparable sales had similar rent rates to properties on University Boulevard that do not have parking.

7. Mr. Edward Simon, Trustee, testified that there is no personal relationship between the parties of the two trusts. His mother is one of the beneficiaries.

8. Mr. Simon testified that the subject property is not rented at below market rates. He testified that Petitioners agree with the income approach expense ratio, vacancy rate and capitalization rate. The issue is the market rent per square foot. He believes that the subject property should be valued at \$8.15 per square foot for the 4,392 square feet on Ohio Street and at \$10.00 per square foot for the 1,000 square feet on University Boulevard.

9. Petitioners are requesting a 2003 actual value of \$310,000.00 to \$320,000.00 for the subject property.

10. Respondent's witness, Keith Erffmeyer, Certified General Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

Market:	\$450,000.00
Cost:	\$382,982.00
Income:	\$377,900.00

11. Based on the market approach, Respondent's witness presented an indicated value of \$450,000.00 for the subject property.

12. Respondent's witness presented eight comparable sales ranging in sales price from \$360,000.00 to \$1,876,700.00 and in size from 3,403 to 10,036 square feet. After adjustments were made, the sales ranged from \$316,200.00 to \$549,300.00.

13. Mr. Erffmeyer testified that he selected the eight sales based on use, location, size and condition. He adjusted for time, location, age, size, and land-to-building ratio or parking. Comparable Sale 6 is most comparable to the subject with the exception of parking. Comparable Sale 1 has no parking and had an indicated value of \$87.60 per square foot. Comparable Sale 8 is located directly across the street from the subject property and was adjusted to \$94.27 per square foot. This sale was included to show the demand in the area.

14. Mr. Erffmeyer testified that he valued the subject property on the lower end of the range at \$450,000.00.

15. Regarding the cost approach, Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$382,982.00. He did not rely on the cost approach.

16. Respondent's witness used the income approach to derive a value of \$377,900.00 for the subject property.

17. Mr. Erffmeyer testified that he used four comparable rental properties in valuing the subject property. The four rental properties ranged in size from 5,000 to 8,000 square feet with an adjusted rent per square foot of \$13.76 to \$16.27 per square foot. He applied a \$15.00 per square

foot rent rate for the University Boulevard frontage and \$8.00 per square foot rent rate for the Ohio Street frontage.

18. Mr. Erffmeyer testified that correlating the market and the income approaches to value is a key component of the subject property's valuation. He believes that the 2003 actual value of the subject property should be \$400,000.00.

19. On cross-examination, Mr. Erffmeyer testified that Comparable Sale 1 has 14,000 square feet of parking. Comparable Sale 2 had a high vacancy and expense ratio due to high vacancy. Comparable Sale 3 is similar to the subject property; however, it is 20 years newer. The age of the property is a major factor. Comparable Sale 4 has some off-street parking and he did not make an additional parking adjustment.

20. The parties agreed that 600 square feet should be allocated to the Ohio Street frontage and changed from the University Boulevard frontage. The corrected indicated value via the income approach is \$348,700.00. Correlated with the market approach of \$450,000.00, the 2003 actual value should be \$375,000.00.

21. Respondent assigned an actual value of \$373,100.00 to the subject property for tax year 2003.

22. On rebuttal testimony, Mr. Kenneth Simon testified that parking in the area is tight. Typically, the properties he leases have parking; if there is no parking, it eliminates a number of potential tenants.

CONCLUSIONS:

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

2. The parties agreed that 1,000 square feet of the subject property should be valued using the University Boulevard rental rate and 4,392 square feet should be valued using the Ohio Street rental rate. The Board concurs.

3. The Board placed little weight on the Petitioners' comparable sales. In addition, the Board disagrees with Respondent's heavy reliance on the market approach since a potential investor would primarily be interested in the income generated from the subject property. Therefore, the Board relied solely on the income approach to value the subject property for tax year 2003.

4. The Board agrees with the Respondent's comparable rental properties; however, the Board determined that the \$15.00 per square foot rent rate for the University Boulevard frontage was excessive. Based on the Respondent's comparable rental properties, the Board determined that \$14.00 per square foot was more appropriate.

5. Using a \$14.00 per square foot rent rate for the University Boulevard frontage and

5. Using a \$14.00 per square foot rent rate for the University Boulevard frontage and applying the Respondent's vacancy rate, operating expenses and capitalization rate, the Board determined that the 2003 actual value of the subject property should be reduced to \$336,154.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$336,154.00.

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 24th day of July, 2004.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Diane M. DeVries

Diane M. DeVries

This decision was put on the record

JUL 23 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

