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|---|---------------------------------|
| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>700 EAST SPEER LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p> | <p><b>Docket No.: 46500</b></p> |
| <p><b>ORDER</b></p>   |                                 |

**THIS MATTER** was heard by the Board of Assessment Appeals on August 11, 2008, Karen E. Hart, Lyle Hansen, and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Eugene J. Kottenstette, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2003 and 2004.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**455 Sherman Street, Denver  
(Denver County Schedule No. 05101-06-036-000)**

The subject property is a five-story multi-tenant office building that was completed in 1981. The building has a gross square footage of 123,938 with a net rentable square footage of 117,648 according to the rent roll. The site is 1.43 acres in size.

Petitioner presented the following indicators of value:

|         |                |
|---------|----------------|
| Cost:   | Not considered |
| Market: | \$9,667,164.00 |
| Income: | \$9,544,543.00 |

Based on the market approach, Petitioner presented an indicated value of \$9,667,164.00 for the subject property. Petitioner presented three comparable sales ranging in sales price from \$88.13

to \$117.30 per square foot. After adjustments were made for date of sale, location, age, economic characteristics, physical characteristics, and size, the sales ranged from \$71.60 to \$82.11 per square foot. Petitioner concluded to a value towards the middle of the range, at \$78.00 per square foot (gross) equal to \$9,667,164.00.

Petitioner presented an income approach to derive a value of \$9,544,543.00 for the subject property. Petitioner concluded to an \$18.00 per square foot rental rate based on leases that were negotiated within the subject during the base period. Petitioner used a rentable square footage of 117,305. Petitioner added parking income of \$186,000.00 based on 2002 actual income. Deductions for 13% vacancy, building expenses, parking expenses, reserves and replacements resulted in a net income of \$1,120,128.00. Petitioner applied a capitalization rate of 10.00% with an additional tax factor of 1.74%.

Petitioner is requesting an actual value of \$9,600,000.00 for tax years 2003 and 2004 for the subject property.

Respondent presented the following indicators of value:

|         |                 |
|---------|-----------------|
| Cost:   | \$13,483,600.00 |
| Market: | \$13,650,000.00 |
| Income: | \$12,387,900.00 |

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$13,483,600.00. As the subject is a leased investment, the Board gives little weight to the value indicated by this approach.

Based on the market approach, Respondent presented an indicated value of \$13,650,000.00 for the subject property. Respondent presented four comparable sales including the May 2001 sale of the subject, ranging in sales price from \$94.49 to \$116.02 per square foot (gross). Respondent relied on sales that occurred within the extended base period, with sales from 1998 included. After adjustments were made, the sales ranged from \$98.81 to \$116.02. Respondent concluded to a value near the middle of the indicated range, at \$105.30 per square foot.

Respondent used the income approach to derive a value of \$12,387,900.00 for the subject property. Respondent concluded to a rental rate of \$18.25 per square foot for 117,648 rentable square feet, with additional income of \$261,240.00 for parking revenue and \$87,979.00 in miscellaneous income attributed to recoveries. Respondent deducted vacancy of 10%, and expenses of 35% to conclude to a net income of \$1,455,580.00. Respondent applied a tax loaded capitalization rate of 11.75%, similar to the Petitioner's rate.

Respondent assigned an actual value of \$12,340,000.00 to the subject property for tax years 2003 and 2004.

Petitioner presented sufficient probative evidence and testimony to prove that the valuation for tax years 2003 and 2004 for the subject property was incorrect.

The Board was convinced that the economic downturn of 2001 further stimulated by the 9/11 terrorist attacks resulted in a decline in both rental rates and occupancy for the subject. Respondent overstated the potential income for the subject, with an above market rental rate and parking revenue well above actual. Respondent also incorrectly included miscellaneous revenue, which was identified as reimbursements and annual lease escalations. The Board was convinced that Petitioner's concluded rental rate and vacancy rate were well supported. However, Petitioner slightly understated potential parking revenue. A parking fee of \$65.00 for covered spaces, as shown in Exhibit B, is believed reasonable, resulting in potential parking income of \$208,200.00. The Board was convinced that Petitioner overstated expenses for the subject, resulting in understated net income. The income approach is recalculated using expenses of \$791,090.00 as suggested by Respondent and comparable to actual expenses after a deduction for property taxes.

The Board concluded that the 2003 and 2004 actual value of the subject property should be reduced to \$10,500,000.00.

### **ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2003 and 2004 actual value for the subject property of \$10,500,000.00.

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

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

**DATED and MAILED** this 1<sup>st</sup> day of October 2008.

**BOARD OF ASSESSMENT APPEALS**

*Karen E Hart*

Karen E. Hart

*Lyle D. Hansen*

Lyle D. Hansen

*Sondra W Mercier*

Sondra W. Mercier

This decision was put on the record

**OCT 01 2008**

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

*Heather Flannery*

Heather Flannery

