

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>HEO LLC,</p> <p>v.</p> <p>Respondent:</p> <p>LARIMER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 48613 & 50780</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 19, 2009, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by William G. Ressue, Esq. The Board consolidated Dockets 48613 and 50780. Petitioner is protesting the 2007 and 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**3801 Automation Way, Fort Collins, Colorado
(Larimer County Schedule No. R1445669 or Parcel No. 87311-14-003)**

The subject is a multi-tenant flex office building with net rentable area of 62,980 square feet. The building was completed in 1995 and is on a 4.40-acre site.

Petitioner presented the following indicators of value:

Market:	\$4,723,500.00
Income:	\$4,699,414.00

Based on the market approach, Petitioner presented an indicated value of \$4,723,500.00 for the subject property.

Petitioner presented three comparable sales ranging in sales price per square foot from \$92.96 to \$108.05, and in size from 19,586 to 116,616 square feet. After adjustments were made,

the sales ranged from \$62.67 to \$82.73 per square foot. Petitioner's witness testified that the greatest reliance was placed on Comparable Sale 2, with an adjusted price of \$62.67 per square foot. Sale 2 was adjusted downward a total of 42% based on its inclusion of excess land, superior location, age, economic characteristics, and superior quality, with a slight upward adjustment for size. The value concluded in the market approach was \$75.00 per square foot or \$4,723,500.00.

Petitioner presented an income approach to derive a value of \$4,699,414.00 for the subject property. Petitioner concluded to a net rental rate of \$10.00 per square foot for the subject property based primarily on a December 2004 lease in the subject. Data regarding two lease renegotiations that occurred in the subject during the base year and four additional market rent comparables were presented. The data indicated a range in net rental rates of \$9.50 to \$11.90 per square foot. Petitioner concluded to a vacancy rate of 10% based on the subject's 9% vacancy and Co-Star's reported 11.1% vacancy within a three-mile radius of the subject. Petitioner concluded to expenses of \$6.80 per square foot based on actual expenses within the subject. Petitioner made a deduction of 10% for operating, maintenance, and reserves, resulting in an annual net income of \$521,057.00. The capitalization rate used was 8.5% plus an additional 2.59% for property taxes, resulting in a capitalization rate of 11.09%. The capitalization rate was based on four market sales and an investor survey.

Petitioner is requesting an actual value of \$4,700,000.00 for the subject property for tax years 2007 and 2008.

Respondent presented the following indicators of value:

Cost:	\$9,120,582.00
Market:	\$7,729,920.00
Income:	\$7,370,325.00

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$9,120,582.00. Respondent gave no weight to this approach.

Based on the market approach, Respondent presented an indicated value of \$7,729,920.00 for the subject property. Respondent presented four comparable sales ranging in sales price per square foot from \$103.93 to \$126.26 and in size from 40,062 to 116,616 square feet. After a time adjustment to Comparable Sale 1, the sales ranged from \$108.05 to \$126.26 per square foot. Respondent made no additional quantitative adjustments.

Respondent used the income approach to derive a value of \$7,370,325.00 for the subject property. Respondent concluded to a net rent of \$12.00 per square foot based on six comparable rentals. Very little details regarding the comparable rentals were provided to the Board. A vacancy and collection loss of 12.0% was used. After a deduction for owner expenses, the net income of \$589,626.00 was capitalized at 8.0%, resulting in a value of \$7,370,325.00. The capitalization rate was based on data gathered by the Assessor from local commercial properties indicating a capitalization rate range of 7.5% to 8.5% for multi-tenant properties.

Respondent concluded to a value of \$7,700,000.00 for the subject property.

Respondent assigned an actual value of \$6,800,000.00 to the subject property for tax years 2007 and 2008.

Petitioner presented sufficient probative evidence and testimony to prove that the tax years 2007 and 2008 valuation of the subject property was incorrect.

Both the Petitioner and Respondent placed reliance on the sale of 2950 East Harmony Road (Petitioner's Sale 2 and Respondent's Sale 4). However, the Board was convinced that neither party made correct adjustments to this sale. The Board was convinced that Respondent's remaining comparable sales were unreliable due to the special consideration given to the buyer by the seller after the sale in two of the comparables. Consequently, the Board feels it appropriate to give some weight to Petitioner's Comparable Sales 1 and 3, with adjusted values of \$82.73 and \$79.55 per square foot.

Respondent contends that Petitioner's adjustment to the 2950 East Harmony Road sale for excess land was excessive. At the time of sale, the excess portion of this sale was fully developed and build-ready. The buyer immediately constructed an addition to the existing building on the excess portion of that site. Assuming a land-to-building ratio comparable to the subject, this sale has excess land of approximately 5.9 acres. Respondent indicated a land value of approximately \$11.00 per square foot for a site proximate to Harmony Road. This results in excess land of more than \$2.8 million. Petitioner's adjustment for excess land was lower than \$2.8 million; therefore the Board does not agree that the adjustment was excessive.

The Board places the greatest reliance on the value indicated by Petitioner's income approach. Petitioner's net rental rate of \$10.00 per square foot was well supported by transactions that occurred in the subject as well as leases in comparable properties that occurred during the base period. Petitioner's 10% vacancy rate was also well supported by the subject's actual vacancy rate and market data. The Board finds Petitioner's deduction of 10% for additional operating expenses, maintenance expenses, and reserves excessive as most of those expenses should be included in the reimbursable operating expenses. A smaller deduction of 3% is made, resulting in a higher net operating income of \$584,858.00. Petitioner's capitalization rate of 8.5% was well supported by market data. After capitalizing the adjusted net income at 8.5% plus tax load, or at 11.09%, the resulting indicated value is \$5,274,000.00, rounded or \$83.74 per square foot. This value is supported by the adjusted comparable sales.

The Board concludes that the 2007 and 2008 actual value of the subject property should be reduced to \$5,274,000.00.

ORDER:

Respondent is ordered to reduce the actual value of the subject property for tax year 2007 and 2008 to \$5,274,000.00.

The Larimer 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 of the respondent county, 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).

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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 3rd day of April 2009.

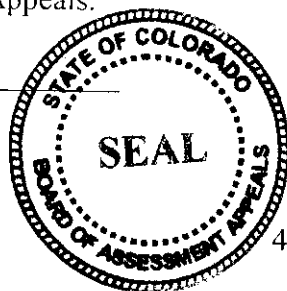
BOARD OF ASSESSMENT APPEALS


This decision was put on the record


APR 03 2009

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


Heather Flannery




Karen E. Hart


Sondra W. Mercier