

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 50223

Petitioner:

ADLP TABLE MESA LLC,

v.

Respondent:

**BOULDER COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 18, 2009 MaryKay Kelley and Sondra W. Mercier presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2006.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**3600 Table Mesa Drive, Boulder, Colorado
(Boulder County Schedule No. R0106253)**

The subject is a single tenant retail grocery store that is leased on a long-term basis to Dillon Companies, Inc. d/b/a King Soopers. The building was originally completed in 1972 and renovated in 1998. The site size is 7.72 acres and the building is 58,862 square feet (according to the Sixth Amendment to Lease, dated December 4, 1998). The lease expires on November 30, 2018.

Petitioner presented the following indicators of value:

Market:	\$4,473,512.00
Cost:	Not applicable
Income:	\$3,631,298.00

Based on the market approach, Petitioner presented an indicated value of \$4,473,512.00 for the subject property.

Petitioner presented two comparable sales ranging in sales price from \$5,205,000.00 to \$15,230,000.00 and in size from 74,495 to 109,000 square feet. The sales indicated unadjusted values of \$69.87 to \$139.72 per square foot. After adjustments were made, the sales ranged from \$74.05 to \$77.56 per square foot. Petitioner concluded to a value of \$76.00 per square foot for the subject. Petitioner did not rely on this approach.

Petitioner presented an income approach to derive a value of \$3,631,298.00 for the subject property. Petitioner valued the subject based on the actual lease rate in place as of June 30, 2004 of \$5.99 per square foot. Petitioner deducted a vacancy of 5%, management fee of 3% and an additional 5% for annual expenses to include operating, maintenance and reserves that are not covered by the tenant. Petitioner applied a capitalization rate of 8.5% based on sales data and investor survey information.

Petitioner is requesting a 2006 actual value of \$3,650,000.00 for the subject property.

Respondent presented the following indicators of value:

Market:	Not applicable
Cost:	Not applicable
Income:	\$5,531,000.00

Respondent presented four comparable sales ranging in sales price from \$3,900,000.00 to \$15,230,000.00 and in size from 29,256 to 108,810 square feet. Time adjusted sales prices ranged from \$103.12 to \$153.36 per square foot. Respondent relied on the sales comparison approach for supporting data to the income approach, with no concluded value given.

Respondent used the income approach to derive a value of \$5,531,000.00 for the subject property. Respondent calculated the value based on contract rent of \$352,566.00, less 3% for vacancy and collection loss and 5% for expenses. Respondent developed capitalization rates for the comparable sales using market rents, market vacancy and market expenses. A rate of 6.5% was applied to conclude to a value of \$4,998,000.00 for the leased fee interest. Respondent contends that the subject has a leasehold value based on a difference in contract rent and market rent of \$84,564.00 annually. Respondent applied a discount rate of 13% to this income to conclude to a leasehold value of \$533,000.00, rounded.

Respondent assigned an actual value of \$5,247,900.00 to the subject property for tax year 2006.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2006 valuation of the subject property was incorrect.

The Board finds that the most reliable indication of value is provided through the income approach. The Sixth Amendment to Lease indicates a total building square footage of 58,862 square feet with a Minimum Annual Rental of \$352,566.00. That equates to a rental rate of \$5.99 per square foot. Based on information provided by both Petitioner and Respondent, the Board was convinced that the current rent was below market and that the long-term lease provided a leasehold estate to the tenant in the form of below market rent. Respondent correctly applied Volume 3 of the *Assessor's Reference Library* (7.13), Long-Term Non-Market Lease Valuation, to value the subject. Respondent concluded to a market rent of \$7.50 per square foot for the subject, which is towards the lower end of the range indicated by Respondent and well below the range indicated by Petitioner. The Board finds this rent reasonable.

Petitioner's deduction of 5% for vacancy and credit loss is believed to be excessive for a single tenant property that is occupied on a long-term basis by a credit tenant. Respondent's deduction of 3% is reasonable. The Board also finds Petitioner's deduction of 3% for management fee and 5% for maintenance and reserves to be excessive for a single tenant property that is leased on a net basis. Respondent's deduction of 5% to cover owner's expenses is reasonable.

Respondent concluded to a capitalization rate of 6.5% based on their conclusion of market rent and vacancy for comparable sales rather than on actual overall rates confirmed by parties involved with the sales. The range calculated by Respondent was 6.24% to 8.31% with an average of 7.29%. Petitioner relied on rates for comparable sales ranging from 8.0% to 8.96% with an average 8.37%, concluding to a rate of 8.5%. The Board finds Respondent's methodology to be flawed and the overall rate selected to be unsupported. At the same time, the Board finds that Petitioner's selected rate does not accurately reflect the credit level of the tenant and long-term nature of the lease. The Board concludes to a rate of 7.75% based on the Integra Realty Resources Real Estate Investment Survey for the summer 2004, which indicated a range of 7.75% to 10.5% for neighborhood/community retail centers.

The Board concludes that the 2006 actual value of the subject property should be reduced to \$4,752,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2006 actual value for the subject property of \$4,752,000.00.

The Boulder County Assessor is directed to change his/her 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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 20th day of August 2009.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley
MaryKay Kelley

Sondra W. Mercier
Sondra W. Mercier

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

H. Flannery
Heather Flannery

