

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 51124

Petitioner:

TOWN & COUNTRY INVESTORS LLC,

v.

Respondent:

LARIMER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 3, 2009, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Jeannine S. Haag, Esq. Petitioner is protesting the 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**2839 South College Avenue, Fort Collins, Colorado
(Larimer County Schedule No. 97261-00-034, Account No. R0131458)**

The subject, built in 1970 on a 1.47-acre site, is a nine-unit retail property with 25,200 net rentable square feet. The largest unit is Jo-Ann's Fabrics and Crafts, which has frontage road access and visibility from College Avenue. The other eight smaller units are located to the rear.

Respondent assigned a value of \$2,600,000.00 for tax year 2008. Petitioner is requesting a value of \$1,650,000.00.

Petitioner presented the following indicators of value:

Market	\$1,764,000.00
Income	\$1,641,606.00

Based on the market approach, Petitioner presented an indicated value of \$1,764,000.00 with three comparable sales ranging in sales price per square foot from \$78.41 to \$158.25 and in size from 16,952 to 56,750 square feet. After adjustments were made, the sales ranged from \$58.81 to \$74.38 per square foot. Value concluded to \$70.00 per square foot or \$1,764,000.00.

Petitioner presented an income approach to derive a value of \$1,641,606.00 for the subject property. Net revenue was as follows: \$8.00 per square foot for the anchor store based on the subject's existing \$8.75 lease and supported by three comparable leases ranging from \$3.00 to \$8.00 per square foot; \$7.30 per square foot for the in-line units based on a subject-unit lease executed during the base period at \$11.30 per square foot gross lease with expenses of \$4.00 and supported by seven in-line comparable leases ranging from \$7.60 to \$11.00 per square foot; and common area maintenance of \$4.00 per square foot based on lease comparables ranging from \$2.75 to \$3.62 per square foot. Vacancy allowance and management fees of 5% each were based on the CoStar Report, and an annual expense of 10% reflected owner expenses. A capitalization rate of 8.5% (plus 2.51% for property taxes) was based on a market range from 6.8% to 8.9% and the Smith/Burbach Survey ranging from 6.5% to 10.5%.

Petitioner, relying on the income approach, reconciled to a value of \$1,650,000.00.

Respondent presented the following indicators of value:

Market	\$2,623,500.00
Income	\$3,461,100.00
Cost	\$1,940,375.00

Based on the market approach, Respondent presented an indicated value of \$2,623,500.00 with three comparable sales ranging in sales price per square foot from \$77.09 to \$127.29 and in size from 15,916 to 32,429 square feet. No adjustments were made to the sales. The witness concluded to a value of \$104.61 per square foot or \$2,623,500.00.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,940,375.00. Respondent gave no weight to this approach.

Respondent presented an income approach to derive a value of \$3,461,100.00 for the subject property. The witness concluded to a net rent of \$14.00 per square foot and common area maintenance income of \$2.50, both based on three comparable rentals. Lease dates, unit locations, sizes, and uses were not provided; the common area maintenance income was not supported. A vacancy and collection loss of 7% was based on the median rate per area business publications. After deduction for owner expenses, the net income of \$294,192.00 was capitalized at 8.50% to derive a value of \$3,461,100.00.

In both verbal testimony and documentary evidence, Respondent relied on the sale of the subject property in March of 2007, well outside the base period. The Board can give no weight to this information.

The Board is convinced that the income approach provides the best indication of value for the subject. Petitioner's data, well supported by the subject's base period leases and comparable market data, carries greater reliance. The Board finds that Petitioner's common area maintenance income of \$4.00 is higher than the comparable range of \$2.75 to \$3.62 and that a portion of reserves and replacements is already reflected in the capitalization rate. Recalculation of the owner's expenses to 5% results in an indicated value of \$1,763,751.00.

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

The Board concludes that the 2008 actual value of the subject property should be reduced to \$1,763,751.00.

ORDER:

Respondent is ordered to reduce the 2008 actual value of the subject property to \$1,763,751.00.

The Larimer 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 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 30th day of April 2009.

BOARD OF ASSESSMENT APPEALS

Sondra W Mercier
Sondra W. Mercier

MaryKay Kelley
MaryKay Kelley

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

Heather Flannery
Heather Flannery

