

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>THORNTON LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ADAMS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 52384</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 5, 2010, Louesa Maricle and MaryKay Kelley presiding. Petitioner was represented by Brian Landy, Esq. Respondent was represented by Jennifer M. Wascak, Esq. Petitioner is protesting the 2009 actual value of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**8978 Washington Street, Thornton, Colorado  
(Adams County Schedule No. R0150885)**

The subject is a vacant 38,616 square foot building (37,700 net leasable square feet) on a 3.83 acre site. With premium frontage, it occupies approximately 25% of the surrounding shopping center.

In 1976, Albertsons, Inc. entered into a ground lease with Dy-Co Mills, Inc. and constructed a grocery store in 1978, expanding in 1989. When the primary ground lease expired on July 5, 2003, Albertsons exercised the first of six five-year options, extending the term through July 5, 2008. Thornton LLC purchased the 20-acre shopping center in May of 2005, including the subject ground lease. Albertsons retained ownership of the subject building improvements. In 2006, Albertsons closed most of its Colorado stores. The subject was vacated in July of 2006 while payment on the ground lease continued until the option expired in July of 2008. On August 31, 2007, Hampton Owned Colorado LLC purchased seventeen former Albertsons leases, including the subject. When

the lease option period expired in July 2008, Hampton Owned Colorado LLC chose not to exercise the next five-year option and abandoned the subject property. In accordance with the terms of the ground lease, ownership of the building improvements then transferred to the land owner, Thornton LLC.

Respondent assigned an actual value of \$1,051,673.00 for tax year 2009. Petitioner is requesting a value of \$650,000.00.

Petitioner's witness, Jay Brown, managing member of Thornton LLC, testified that the building suffered extensive damage after being vacated in 2006: all equipment, racks, coolers, freezers, air conditioning units, heat vents, and light fixtures were removed; ceiling panels, floors, and walls were damaged; roof holes were visible, pipes were hanging, vents were cut or missing, electric wires were hanging, and floor pipes were exposed; and damage to floors required leveling. Mr. Brown presented repair bids totaling \$800,000.00, rounded. Petitioner contended that the cost estimate for the deferred maintenance should be deducted from the value of the property because the repairs are required to bring the building up to leasable condition. A prudent buyer would require that the repairs be made prior to closing on the sale or would require a deduction from the sale price for the cost of the repairs.

Respondent presented the following indicators of value, concluding to a value of \$1,051,700.00.

Market:	\$38.66 to \$70.49/SF
Cost:	\$1,814,586.00
Income:	\$1,053,244.00

Based on the market approach, Respondent presented an indicated value of \$38.66 to \$70.49 per square foot for the subject property. The witness presented four comparable sales ranging in sales price from \$1,175,000.00 to \$2,000,000.00 and in size from 16,668 to 41,384 square feet. Sales 2 and 3 were part of a portfolio purchase of 17 Albertsons stores, their "sales prices" determined by market value allocations. No adjustments were made to the sales and a value was not concluded.

Respondent used a cost approach to derive a value of \$1,814,586.00. No weight was given this approach due to the age of the improvements.

Respondent used the income approach to derive a value of \$1,053,244.00 for the subject property. A rental rate of \$5.00 was estimated, below the \$5.50 to \$8.10 range of former Albertsons stores, although all store buildings were newer and neither lease dates nor lease conditions were provided. A 7% vacancy and collection loss was based on confidential market questionnaires. Expenses were estimated at 15%, and net operating income was capitalized at 9% plus 3% for taxes. An additional deduction of \$188,500.00 for vacancy (\$5.00 rental rate times 37,700 square feet) reflected rent loss for one year. Respondent placed the most weight on this approach.

Respondent's witness testified that the extent of the damage to the building interior was not known prior to seeing Petitioner's photos and that Respondent's appraisal did not account for actual

damage. He did not dispute the extent of the damage or Petitioner's cost to cure estimate but considered the appropriate method was apportionment over the expected life of the individual components.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect.

The Board does not rely on the income approach for a value indication for the subject property. The income approach is not conducive to application of repair costs. In addition, the Board is not convinced that Respondent's rental rate is market based: Lease dates and conditions of comparable leases were not provided.

The Board relies on the market approach to conclude to a value for the subject property. Only Sales 1 and 4 in Respondent's market approach were independent market transactions: Sale 1, a former Albertsons store, was comparable in age and in size; Sale 4, an unknown retail building, was half the size of the subject building, resulting in a higher price per square foot. Sale 1 (\$38.66 per square foot) is considered a reliable indicator of value. Application of \$38.66 per square foot to the subject's 37,700 square feet results in a value of \$1,457,482.00.

The parties agree that physical condition was poor as of the assessment date, that market value was impacted, and that the typical buyer would expect rentable condition or compensation in some form. The Board disagrees with Respondent that the cost of the deferred maintenance should be apportioned over the life of the building components, because that does not reflect the actions of investors in the market. The Board concludes that a condition adjustment of \$800,000.00 to Respondent's Sale 1 is appropriate.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$650,000.00.

### **ORDER:**

Respondent is ordered to reduce the 2009 actual value of the subject property to \$650,000.00.

The Adams 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 of the respondent county, 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).

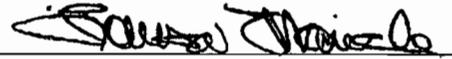
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

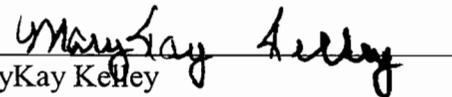
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 17<sup>th</sup> day of June 2010.

**BOARD OF ASSESSMENT APPEALS**



Louesa Maricle



MaryKay Kelley

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



Heather Flannery

