BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **GREELEY MALL 1/GKD FUND 1 LLC,** v. Respondent: **WELD COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 52460**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 12, 2010, Diane M. DeVries and Karen E. Hart presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Cyndy Giauque, Esq. Petitioner is protesting the 2009 actual value of the subject properties.

Subject property is described as follows:

2050 Greeley Mall Street, Greeley, Colorado
Weld County Schedule Nos. R4473006, R3761086, and R1044296

The subject properties are a commercial regional shopping center known as the Greeley Mall. The improvements were built in 1973 with an addition built in 2003. The improvement size is 365,318 gross square feet with a net rentable area of 304,134 square feet. The land area is 2,168,554 square feet or 49.78 acres. Only a few of the mall's parcels are appealed. The parcels being appealed are:

R4473006: The enclosed mall consisting of 210,409 square feet plus 41,140 square feet of the small Dillard's space, and includes all the land, approximately 49.78 gross acres. There is 304,134 square feet of gross leasable area. The overall quality and condition of the mall was average on the assessment date.

R3761086: The former Dillard's anchor tenant space that is vacant and consists of 110,152 gross square feet.

R1044296: The restaurant pad that was formally Pizza Hut and is now the Road Kill Grill, consisting of 3,617 square feet. The restaurant was built in 1995 and was in poor condition on the assessment date.

The subject properties are located in the southern portion of the City of Greeley. The City conducted a study of the area in 2006, which resulted in a "blight" designation for the Greeley Mall and surrounding acreage. A tax increment financing district (TIF), including the subject properties, was approved in February 2008.

The subject properties sold within the five-year extended base period, on July 27, 2006 for $47,200,000.00, which included personal property and the 45,755 square foot Cinemark Movie Theatre, which is not a part of this appeal. The purchase price is an allocation of a bulk portfolio sale, which included the Holiday Village Mall in Great Falls, Montana. The subject properties were 97.7% leased at the time of sale, and the total price per square foot, including areas not under appeal, was $98.09 per square foot for 481,180 square feet. There was a $41,000,000.00 loan issued at the time of sale.

Petitioner presented the following indicators of value:

Market:	$25,600,000.00
Cost:	Not completed, utilized for a land value only
Income:	$26,000,000.00

Based on the market approach, Petitioner presented an indicated value of $25,600,000.00 for the subject properties.

Petitioner presented three comparable sales ranging in sales price from $28,100,000.00 to $37,017,000.00 or $40.00 to $57.00 per square foot, and in size from 328,824 to 463,950 square feet. After adjustments were made, the sales ranged from $67.03 to $72.64 per square foot.

Petitioner's witness, Marcus B. Scott, MAI with Asset Valuation Advisors, LLP, testified that there were no sales of regional malls in Greeley. He looked at seven sales in the front-range, including the subject properties' sale. Mr. Scott eliminated Sales 1, 3, 4, and 6 for size and location. Mr. Scott used Sales 2, 5, and 7 to value the subject properties, noting that Sale 2 was also used by Respondent. Mr. Scott concluded to a value of $70.00 per square foot or $25,600,000.00 rounded.

Petitioner presented a cost approach to derive a land value for the subject properties of $4,300,000.00.

Mr. Scott presented five comparable land sales ranging in sales price from $1,984,800.00 to $6,547,000.00 or $1.87 to $5.80 per square foot, and in size from 720,883 to 2,129,648 square feet. A qualitative analysis and ranking was done of the sales, resulting in a concluded value of $2.00 per square foot or a total rounded land value of $4,300,000.00.

Mr. Scott did not apply the cost approach to the subject properties' improvements, as buyers generally do not consider the cost approach for a property of this age and depreciation is difficult to determine.

Petitioner presented an income approach to derive a value of $26,000,000.00 for the subject properties.

Mr. Scott testified that there were no new inline leases written during the 18-month study period – only kiosk and seasonal store leases. Mr. Scott used a rental rate of $10.00 per square foot for the typical retail space and $7.35 per square foot for the anchor space. The most recent anchor lease was Cinemark in April 2004, which was newly renovated space at $10.50 per square foot and $3.75 per square foot for CAM. CAM includes common area maintenance and other expenses, such as janitorial, security, parking lot paving, etc…, which are recovered from tenants separate from the rent. The subject leases are not pure net. There are CAM expenses the landlord must cover for the vacant space, which still must be cleaned, secured, and maintained in show condition. Mr. Scott projected a CAM reimbursement of $12.00 and $2.63 per square foot for inline and anchor spaces respectively. Mr. Scott used a stabilized vacancy rate of 10%. He trended actual expenses to mid year 2008 on both recoverable and non-recoverable expenses.

Mr. Scott relied on the Burbach survey to conclude a capitalization rate of 10%. He used a rate from the top of the range as the subject property is older, located in a blighted area, had a 56.8% vacancy on the assessment date, and will have over 30% of the existing leases roll over within the next 12 months; all of these factors contribute to a higher risk. Mr. Smith added an effective tax rate of 2.183% to the cap rate for a concluded tax loaded capitalization rate of 12.183%.

Mr. Scott performed two income approach analyses. Scenario A valued the entire property using actual income and expenses for a value of the total mall property of $35,005,345.00. Mr. Scott then removed the assessor's value of the properties not included in the appeal, resulting in a value for the subject properties of $27,110,335.00.

Under Scenario B, Mr. Scott calculated an income approach using actual occupancy and adding for vacant space as though rented to stabilization. He used a blend of actual leases and market rents for vacant space, using a stabilized vacancy of 10%. He used the expenses from Scenario A and capitalization rate of 12.183% to arrive at a value, as if stabilized, of $33,316,992.00. However, Mr. Scott testified that the subject properties have excess vacancy. Actual vacancy is 56.8%. The excess vacancy is 142,472 square feet with an annual rent loss of $13.35 per square foot. Mr. Scott believes it will be three or four years before the subject properties achieve stabilized vacancy. He deducted rent loss, lease commissions, and tenant improvements for the excess vacancy, and he determined a value range for the subject properties of $25,150,000.00 to $26,450,000.00. Mr. Scott believes Scenario B is most accurate.

Weighting both scenarios, Mr. Scott concluded to a value of $26,000,000.00 for the subject properties via the income approach.

Mr. Scott gave most reliance to the income approach, which is what a buyer would use. Also, there is not enough reflection of excess vacancy in the market approach. Mr. Scott concluded to a value of $26,000,000.00.

Petitioner is requesting a 2009 actual value of $26,000,000.00 for the subject property with $4,300,000.00 allocated to the land and $21,700,000.00 allocated to the improvements.

Respondent presented the following indicators of value:

Market:	$36,531,800.00
Cost:	$36,893,547.00
Income:	$35,192,500.00

Based on the market approach, Respondent presented an indicated value of $36,531,800.00 for the subject property.

Respondent presented four comparable sales ranging in sales price from $11,900,000.00 to $47,200,000.00 and in size from 98,039 to 462,653 square feet. After adjustments were made, the sales ranged from $71.33 to $130.44 per square foot.

Respondent's witness, Charles C. Jack, Certified General Appraiser with the Weld County Assessor's Office, testified that Comparable Sale 1 is the subject properties' sale. Mr. Jack adjusted the sale for personal property and for physical and income variance allowances given at closing, to arrive at an adjusted sales price of $45,880,000.00 or $111.61 per square foot. Mr. Jack gave most emphasis to the subject properties' sale with support from Sale 4, the Twin Peaks Mall sale, which was also used by Petitioner, and gave little weight to Sales 2 and 3. Mr. Jack concluded a value of $100.00 per square foot, or $36,531,800.00 via the market approach.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject properties of $36,893,547.00.

Mr. Jack presented four comparable land sales ranging in sales price from $3.50 to $5.80 per square foot and in size from 533,864 to 721,332 square feet. Mr. Jack concluded to $4.00 per square foot or $8,674,216.00 for the subject properties' land value.

Mr. Jack used Marshall and Swift cost tables to derive his improvement values, using a 50-year life expectancy, average condition, and 21% physical depreciation to arrive at a replacement cost new less deprecation improvement value of $28,219,331.00, for a total value via the cost approach of $36,893,547.00, or $100.99 per square foot. Mr. Jack gave no weight to this approach.

Respondent used the income approach to derive a value of $35,192,500.00 for the subject properties.

For a rental rate, Mr. Jack testified that he looked at similar mall rates as well as the subject properties' rental rates and concluded to a rate of $20.50 per square foot for smaller store areas and $5.00 per square foot for the larger store areas; Mr. Jack testified the lease rates included CAM. The subject properties' actual vacancy had increased in June 30, 2008, so Mr. Jack increased the 10% stabilized vacancy allowance to 30% to account for the vacant space. Mr. Jack looked at published surveys to arrive at an 8.5% capitalization rate to which he added an effective tax rate of 2.18%, for an overall rounded capitalization rate of 11%.

Mr. Jack then added the actual land lease income of $504,971.00 at a 9% cap rate, which would have no recapture rate, to arrive at a total subject properties' value of $35,192,500.00.

Mr. Jack testified that the Cost approach was the least reliable approach due to depreciation factors. The market approach was reliable based on the subject properties' own sale and the enclosed Twin Peaks Mall sale, Comparable Sale 4. The income approach was market based, compared to the subject properties' actual income, and was given the most weight. However, Mr. Jack testified that he did not have the subject properties' leases when he developed his report.

Mr. Jack concluded to a value of $35,150,690.00 for the subject properties for tax year 2009.

Regarding Petitioner's sales comparison approach, Mr. Jack believes Comparable Sale 2 should have a positive adjustment for a lesser occupancy rate of 82% versus the subject properties' actual occupancy of 95%, pointing out that Dillard's had vacated the property but was still obligated to pay its rent as of June 30, 2008.

Regarding Scenario A of Petitioner's income approach, there is no income stream for four of the buildings that Mr. Scott excluded, so they should not be removed from the value conclusion. Only the Cinemark property should be deducted. The land is included, and the land lease income should be included in the analysis. Mr. Jack also pointed out that there was no regional retail capitalization rate at or above 10% in the Burbach Winter 2007/2008 report.

Regarding the Burbach survey, Mr. Jack testified the he did not use Pueblo data as the Greeley market was better. The extracted cap rate from the subjects' sale is 9.1% and Costar reported 9% for the Twin Peaks Mall, the common sale used by both parties. Mr. Jack conceded he would now consider these rates. Mr. Jack believes the subject vacancy is short term, not long term, and the subject properties were stabilized as of June 30, 2008, at which time they were 95% occupied. There is no functional obsolescence at the subject properties as they flow well. There is no economic or external obsolescence to the subject properties; competition is further west of the subject properties.

Regarding the land sales, Mr. Scott testified that commercial property value trends were increasing according to his research. He was not aware of Petitioner's Land Sale 2, which could have been used by him but should be adjusted for location, and he would give it less weight than his older sales. It is nearest in location to the subject but has less traffic and is still being developed; it would sell at a cheaper price.

Respondent assigned an actual value of $35,150,690.00 to the subject properties for tax year 2009, allocated as follows:

Account No.	Land Value	Improvement Value

R4473006	$8,674,216.00	$22,884,314.00
R3761086		3,304,560.00
R1044296		287,600.00
	$8,674,216.00	$26,476,474.00

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

The Board agrees with both parties that the cost approach is of little use in determining the value of the subject property and gives this approach no weight.

Regarding the sales comparison approach, the Board gives most weight to the Twins Peak Mall sale used by both parties. The Board adjusted this sale on both Petitioner's grid and Respondent's grid to reflect a positive 10% adjustment for superior occupancy. This resulted in an adjusted value indication on both grids of $29,000,000.00 rounded.

Regarding the income approach, the Board agrees with Respondent that Petitioner's Scenario A should not have deducted the four properties, which are land leases only; adding their value back into the analysis results in a value of $30,887,395.00, rounded to $31,000,000.00.

Regarding Petitioner's Scenario B, the Board is not convinced that excess vacancy is a factor for tax year 2009. Therefore, Scenario B is given little weight.

Regarding Respondent's income approach, the Board believes the capitalization rate should be 9%, based on the subject properties and Twin Lakes Mall sales, for a tax loaded capitalization rate of 11.5%. Also, the Board recalculates Respondent's income approach using a net rentable area of 93,270 square feet for the anchor space in Dillard's and 210,864 square feet for the remaining spaces, for a total net rentable area of 304,134. The Board calculates the value after these changes to be $31,846,519.00, rounded to $32,000,000.00.

Giving weight to both Petitioner's and Respondent's income approaches as adjusted, and the sales comparison approach value as indicated by the Twin Peaks Mall sale, the Board concludes that the 2009 actual value of the subject properties should be reduced to $31,000,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject properties to $31,000,000.00.

The Weld 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

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 1st day of December 2010.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Karen E. Hart

Diane M. DeVries

Karen E. Hart

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

Amy Bruins

Amy Bruins

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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