

<p><b>BOARD OF ASSESSMENT APPEALS,</b>  <b>STATE OF COLORADO</b>  1313 Sherman Street, Room 315  Denver, Colorado 80203</p> <hr/> <p>Petitioner: .</p> <p><b>CJ CO.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF  EQUALIZATION.</b></p>	<p><b>Docket No.: 58964</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 14, 2012, Gregg Near and Debra A. Baumbach presiding. Petitioner was represented by Richard G. Olona Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**13600 E. Mississippi Ave, Aurora, Colorado**  
**Arapahoe County Schedule No. 1973-24-1-15-004**

**13310 E. Mississippi Ave, Aurora, Colorado**  
**Arapahoe County Schedule No. 1973-24-1-15-003**

The subject property consists of two multi-tenant retail buildings containing a net rentable area of 85,980 square feet known as Potomac Square Shopping Center. The first building consists of 70,500 square feet of anchor space. The second building consists of 14,480 square feet of inline space. The subject site is 2.31 acres and has a close access to I- 225. Year of construction is 1985 and the improvements are considered to be in average condition.

Petitioner is requesting an actual value of \$2,800,000 for tax year 2011. Respondent assigned a value of \$5,812,000 for tax year 2011 but is recommending a reduction to \$5,700,000.

Petitioner’s witness, Mr. Todd Stevens, presented the following indications of value:

Cost: N/A  
Market: \$3,788,214  
Income: \$2,756,139

Mr. Stevens testified that although the cost approach was considered in the analysis, it was not applied in determining the subject's final conclusion of value.

In developing the market approach, Mr. Stevens presented four comparable sales that ranged in sales price from \$1,600,000 to \$7,508,650 and in size from 41,384 to 122,446 square feet. After adjustments were made, Mr. Stevens concluded to the subject's value of \$3,788,214 based on the market approach.

Mr. Stevens also presented an income approach to derive a value of \$2,756,139 for the subject property. Mr. Stevens presented five rent comparables from anchor tenant spaces including a lease of the subject's anchor space. The rents ranged from \$2.00 to \$7.79 per square foot on a triple net basis. An additional six leases from inline tenant spaces were also presented including a lease of the subject's inline space. The leases ranged from \$4.64 to \$10.00 per square foot on a triple net basis. Petitioner's witness concluded to a rental rate of \$3.50 per square foot for the anchor building and \$10.00 per square foot for the inline building.

Mr. Stevens applied a vacancy allowance of 15%, a management fee of 5% and operating, maintenance, and reserves of 15%. Petitioner's witness based his overall capitalization rate of 10% on the data presented by the Burbach & Associates, Inc. Real Estate Investment Survey. Using a capitalization rate of 10%, the witness concluded to a value of \$2,756,139 for the subject property via the income approach.

Mr. Stevens testified that he placed most weight on the income approach considering it as the most supportable method to value the subject. Mr. Stevens pointed out that his analysis included two executed leases within the base period supporting market trends for that time frame.

Mr. Stevens testified that Respondent has overvalued the subject property by not considering factors that negatively affect the subject's value. According to Mr. Stevens, the property is unable to attract top rated tenants because of its location in a high crime area and close proximity of two substance rehabilitation centers.

Mr. Stevens testified that Respondent also relied on asking lease rates, not actual lease rates. Per Mr. Stevens, several of Respondent's comparable sales took place within the extended time frame and therefore reflect different market conditions and higher sales prices. The comparable sales were superior and qualitative adjustments were made to the comparable sales resulting in higher value ranges. According to Mr. Stevens, Respondent's capitalization rate is too low.

Petitioner is requesting an actual value of \$2,800,000 for the subject property for tax year 2011.

Respondent presented an indicated value of \$5,700,000 for the subject property for tax year 2011.

Respondent's witness Mr. Marcus Scott, MAI, a Certified General Appraiser with the Arapahoe County Assessor's Office, testified that he considered all three approaches to value the subject, however, he placed most reliance on the market and income approaches. He presented the following indications of value:

Cost: N/A  
Market: \$6,170,000  
Income: \$5,070,000

Applying the market approach, Mr. Scott presented six comparable sales ranging in sales price from \$1,620,000 to \$7,200,000 and in size from 8,419 to 92,654 square feet. Mr. Scott made qualitative adjustments to the comparables and correlated to the subject's value of \$70.00 per square foot.

The witness presented an income approach to derive a value of \$5,070,000. Mr. Scott concluded to a rental rate of \$5.00 per square foot for the anchor space and \$12.00 per square foot for the inline space. His value conclusions were based on nine rent comparables of inline spaces and three rent comparables of anchor spaces. Mr. Scott also gave considerable weight to the existing leases of the subject.

Mr. Scott applied a 10% stabilized vacancy allowance, a 10% expense factor, and an overall capitalization rate of 8.60% based on the market abstraction and investment surveys. The capitalization rate used was at the lower end of the presented range based on the subject's overall performance. According to Mr. Scott, the subject is outperforming the market because of the subject's lower rental rates; therefore, the subject's stabilized vacancy is concluded to a lower rate.

Respondent contends that Petitioner's expense ratio is excessive for a triple net lease; any expenses from excess vacancy are already accounted for through the vacancy allowance factor. According to Mr. Scott, Petitioner's Sale Two has deed restrictions and Sale Three was a Real Estate Owned sale, both of these would not be considered comparable.

Respondent assigned an actual value of \$5,812,000 for the subject property for tax year 2011 but is recommending a reduction to \$5,700,000.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2011.

The Board agrees that the market approach and the income approach are the most reliable value indicators. The Board was persuaded that limited availability of comparable sales and significant required adjustments warrant the market approach secondary to the income approach. Therefore, the Board placed most reliance on the income approach.

The Board agrees with Petitioner's argument that the shopping center suffers from external, functional and location obsolescence and does not command market lease rates. The Board agreed with Respondent's argument that Goodwill and Aurora Healthcare are healthy tenants and contribute to a positive market perception. The Board also agreed that overall the property was underperforming during the base time period.

In determining the lease rate for the subject, both parties correlated to a rental rate within a similar range. The Board gave most weight to Respondent's lease data that contained a larger sampling of market data. Respondent gave considerable weight to the subject's actual lease data executed within the applicable time frame.

The biggest differences between the two income approaches presented by the parties were the expense ratios, capitalization rates and vacancy rates. The Board concluded that Petitioner's expense ratio calculations were overstated and gave greater reliance to Respondent's expense ratios. The Board was not persuaded by Respondent's capitalization rate or vacancy rate. The Board was convinced that the subject property underperforms in the market and a greater risk is involved for any potential investors. The Board found Petitioner's capitalization rate to be a more supportive indicator of value for the subject. The Board was also convinced that a higher vacancy rate is appropriate. Therefore, the Board concluded a vacancy rate of 12% indicating a value of \$4,263,000 (rounded) for the subject property for tax year 2011.

The Board concluded that the 2011 actual value of the subject property should be reduced to \$4,263,000 (rounded).

### **ORDER:**

The appeal is granted. Respondent is ordered to reduce the 2011 actual value of the subject property to \$4,263,000.

The Arapahoe 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.

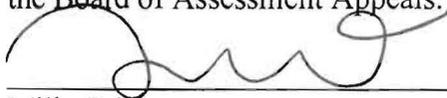
**DATED and MAILED** this 12th day of December, 2012.

**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
Gregg Near

  
\_\_\_\_\_  
Debra A. Baumbach

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

  
\_\_\_\_\_  
Milla Crichton

