

<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>WPC SOUTH WEST LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 59044</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 26, 2012, Diane M. DeVries and Louesa Maricle 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.

The subject property is described as follows:

**8100 Southpark Way, Littleton, Colorado  
Arapahoe County Parcel No. 2077-33-4-03-014**

The subject property is a three-building, multi-tenant, industrial flex property built in 1986 in the Southpark development located north of County Line Road between Broadway and Santa Fe Drive in Littleton. The property has a net rentable area of 132,305 square feet. The one-story buildings are situated on an 8.387-acre site and share common surface parking lots. United Launch Alliance (ULA), a company related to Lockheed Martin, was a long-term tenant occupying the largest of the three buildings and occupied space during the tax year base period. ULA gave notice to vacate the space in April 2010 and moved out in December 2010, after the date of value for tax year 2011. Petitioner purchased the subject property in December 2007 for \$14,750,000. The sale date is prior to the base period for tax year 2011, but within the extended five-year period from which Respondent is allowed to use sales.

Petitioner is requesting an actual value of \$7,000,000 for the subject property for tax year 2011. Respondent assigned a value of \$14,507,500 for the subject property, but is recommending a reduction to \$11,700,000.

Petitioner contends that Respondent has used the 2007 sale of the subject property as the basis of the 2011 value, but that the 2007 sale is not relevant because Petitioner (the buyer) believed ULA would continue to be a long-term tenant and would not have paid the same price had it known the largest tenant would terminate its lease. Petitioner contends that Respondent also used sales of significantly newer properties than the subject and has not adequately adjusted for age, economic conditions and functional obsolescence. Petitioner contends Respondent has treated the subject as office space rather than office/warehouse and used an above market rental rate for the property.

Respondent contends that the bulk of the building square footage is finished and used as office space and that it was 98% leased on the effective date of value and during the base period. Respondent disagrees with Petitioner's claim that the property has significant functional obsolescence. Respondent contends that two of the base period sales relied on by Petitioner involved atypical seller motivation and are not qualified sales. Respondent contends that Petitioner has overstated the operating expense deduction applied in the income approach in the amount of the separate management fee, which should already be included in the operating, maintenance, and reserves deduction.

Petitioner presented the following indications of value:

Market:	\$6,615,250
Income:	\$7,918,454
Cost:	Not presented
Final Conclusion:	\$7,000,000

Todd Stevens, President of Stevens & Associates Cost Reduction Specialists, Inc., testified for Petitioner and presented his consulting assignment analysis of the subject property's value. Mr. Stevens testified that during the base period, the value of the subject property was adversely affected by the national economic crisis. The building improvements suffer from functional obsolescence because the design prohibits access to the drive-in doors by 18-wheel trucks, the conversion of warehouse space to office for ULA diminished the functional use for subsequent tenants, and there is inadequate on-site parking for office use. For his valuation analysis, Mr. Stevens considered, but did not present a conclusion of value by the cost approach. The witness presented a market approach analyzing three comparable sales that occurred during the base period. The sales ranged in price from \$1,500,000 to \$7,250,000 and in size from 40,800 to 144,274 square feet. The sale properties were constructed between 1985 and 2000. The witness made quantitative adjustments to the sales for age of the improvements, economic conditions, defined as lease rates and vacancy in each property, physical characteristics, defined as the overall appeal of the improvements, and size. After adjustments were made, the sales indicated values ranging from \$39.34 to \$56.24 per building square foot. The witness concluded to a value of \$50.00 per square foot for the subject property resulting in a total value of \$6,615,250 by the market approach.

For the income approach, Petitioner's witness presented eight flex space leases signed during the base period including one in the subject property. The leased areas for six of the leases ranged in size from 2,476 to 19,200 square feet. The square footage areas for two of the leases were not provided. Seven of the leases were on a triple net basis and the rental rates ranged from \$4.75 to \$10.50 per square foot. The lease in the subject was on a gross basis and the rate was \$7.27 per square foot. The witness testified that he concluded to a triple net market rent for the subject of \$7.00 per square foot. The witness deducted 10% for vacancy allowance, a 5% management fee, and 10% for operating costs, maintenance, and reserves. He capitalized the net income at 9.0% based on national and Colorado investor expectation surveys and concluded to a value of \$7,918,454 by the income approach.

Petitioner's witness testified that he gave more weight to the value by the market approach because the uncertain economic times cause the income approach to be less reliable and he concluded to a value of \$7,000,000 for the subject property.

Respondent presented the following indicators of value:

Market:	\$11,870,000
Income:	\$11,590,000
Cost:	Not presented
Final Conclusion:	\$11,700,000

Marcus Scott, MAI, a Certified General Appraiser in Colorado and Appraiser with the Arapahoe County Assessor's Office testified for Respondent regarding the valuation of the property. Mr. Scott considered, but did not present a conclusion of value by the cost approach. Mr. Scott testified that on the date of value, the property had approximately 78% office finish and 22% warehouse and was in average condition. Mr. Scott contends that because of the large percentage of office finish, the interior layout is more representative of a research and development complex, as was the existing tenant mix on the date of value.

Respondent's witness presented six comparable sales, including four that occurred during the 18-month base period and two that occurred within 24 months of the date of value. The sale prices ranged from \$50.25 to \$104.85 per square foot and in size from 43,805 to 144,274 square feet. The properties were built from 1982 to 2000. Citing inadequate data to make quantitative adjustments, the witness considered qualitative adjustments to the sales for factors including, but not limited to, date of sale, conditions of sale, market conditions, age of the improvements, building size, percentage of office finish, and other physical characteristics. After considering the qualitative adjustments to the sales relative to the subject, the witness testified that he arrayed the market data and ranked the subject lower than the top three sale prices and higher than the lowest two sale prices. The witness testified that he concluded to a price of \$90.00 per square foot for the subject and a rounded total value of \$11,870,000. The witness gave evidence that this indication of value is well supported by the December 2007 sale of the subject for \$14,750,000 and it shows a decline in value of approximately 20% over the 2.5 years since that sale occurred.

For the income approach, Respondent's witness presented the rent roll for the subject property, including three leases signed during the base period, and eight base period leases at properties he considered comparable to the subject. The witness testified that one of the leases signed at the subject during the base period was a renewal, one appears to be an expansion by an existing tenant, and the third is a new tenant. Those three lease rates ranged from \$5.00 to \$11.75 per square foot. The leases at comparable properties ranged in size from 1,934 to 28,748 square feet and the net rental rates ranged from \$8.50 to \$12.50 per square foot. Common area maintenance (CAM) charges also apply to these leases. The witness testified that the second quarter 2010 average net rental rate for all flex building projects within a three-mile radius of the subject was \$9.97 per square foot, according to CoStar Analytics, an industry survey company relied on by both parties. The witness presented additional published second quarter 2010 rent survey results, but testified that he gave less weight to those. The witness testified that he concluded to a market rent for the subject of \$10.00 per square foot on a net basis. After giving consideration to the ULA notice to vacate, the witness applied a 10% vacancy rate. The witness deducted 10% of the effective gross income for owner expenses including a management fee, general administrative expenses, and reserves for replacement. The witness capitalized the net income at 9.25% based on capitalization rates extracted from four of the sales he used in the market approach and investor surveys. Respondent's witness testified that he concluded to a higher overall rate to reflect the ULA notice to vacate its leased space in the property. The witness concluded to a rounded value of \$11,590,000 by the income approach.

Respondent's witness testified that because there were fewer sales during the base period, he gave more weight to the income approach and concluded to a value for the property of \$11,700,000.

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

With regard to Petitioner's claim that the subject property has significant functional obsolescence because it cannot accommodate large 18-wheel trucks, the Board agrees with Respondent that the design of the improvements was not intended for large semi-truck use in the same way storage and distribution warehouse buildings would. The Board finds that Petitioner's claim that the large amount of office space in the property also represents functional obsolescence disregards the intent of office/warehouse flex space, which is to provide flexible use of the space to accommodate specific needs of the varied users. The Board concludes that the property does not have significant functional obsolescence. With regard to the 2007 sale of the subject property and Petitioner's claim that the current owner would not have paid the same price had it known ULA would terminate its lease, the Board finds that a well informed buyer has access to the signed leases and any termination clauses that may apply, and that similar risk applies to all leased properties. The Board concludes that Respondent did consider the notice to vacate in the property's value. The Board concludes that Respondent did not give undue consideration to the 2007 sale of the subject and cites the 20.7% lower value conclusion presented by Respondent at hearing.

The Board finds that Petitioner has given significant weight to the lease to a new tenant at the subject property during the base period in refuting the market rent used by Respondent. However, the Board concludes that the 2,476 square foot short-term, 6-month lease is not reliable evidence of the market rent for the 132,305 square foot subject property. The Board is persuaded by evidence

presented that two of Petitioner's three sales were or could have been affected by atypical seller motivation causing those sales to be less reliable; and because Petitioner has placed more weight on the market approach, the remaining sale is not sufficient to persuade the Board that the value presented by Respondent is incorrect. One of those two sales was also presented by Respondent's witness who addressed the potential atypical seller motivation and gave it less weight.

**ORDER:**

The Petition is granted.

The Arapahoe County Assessor is ordered to reduce the 2011 actual value of the subject property to Respondent's recommended value of \$11,700,000.

**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).

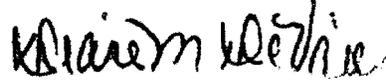
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 19th day of July, 2012.

**BOARD OF ASSESSMENT APPEALS**



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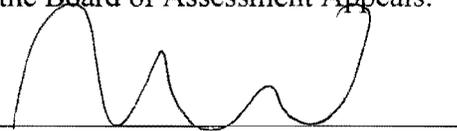
Diane M. DeVries



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Louesa Maricle

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



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Milla Crichton

