

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>OBK AURORA LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket Nos.: 60205 & 60966</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 15, 2012, Diane M. DeVries and Brooke B. Leer presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2011 actual value of the subject property.

The actual value conclusion for 2011 will also be applied for the 2012 tax year. The testimony and exhibits presented at the hearing of Dockets 60196, 60960, 60202 and 60968 on September 24, 2012 are incorporated as evidence herein.

Subject property is described as follows:

**18620 East Iliff Avenue, City of Aurora, Arapahoe County, CO
Arapahoe County Schedule No. 1975-27-2-18-001**

The subject property is a free-standing, single-tenant, concrete and masonry retail building. It is leased by Walgreens. The building has one level, contains 14,490 square feet, and was built in 2002.

Petitioner is requesting an actual value of \$2,130,000 for the subject property for tax years 2011 and 2012. Respondent assigned a value of \$3,158,000. This value is the maximum value determined by Respondent at the County Board of Equalization. Respondent's appraisal presented at the hearing had a higher value conclusion of \$3,300,000. The Board has addressed the differences in the valuation procedures used by Petitioner and Respondent and selected the

method of analysis that the Board finds to be the most appropriate for ad valorem purposes for the subject's property type.

Petitioner's expert witness, Christopher N. Baker, MAI and Certified General Appraiser, appraised the subject property with a June 30, 2010 valuation date. He appraised the fee simple estate applying all three approaches to value. He concluded the highest and best use of the subject as continued current retail-related use.

Petitioner's appraiser presented the income capitalization approach and used rental data from two former Walgreens stores offered for lease at \$15.00 (Comparable 1) and \$16.00 (Comparable 2) per square foot, one located on Parker Road in Aurora and the other in west Denver on Colfax. The other rental data presented (specifically, Comparables 3 and 4) were south and east of the subject but in relatively similar areas to the subject. The base rental rates were \$13.50 and \$14.00 per square foot for national credit tenants. On page 40 of Petitioner's report there is a table containing specific rent information for national credit tenants. The better comparable rents to the subject from this table are ones built between 2003 and 2008, in the 12,000 to 20,000 square foot range and in Aurora. The base rents, applying these parameters, range from \$12.00 to \$18.00 per square foot, rounded. Petitioner applied a market rent of \$15.00 per square foot to the subject building. The Board concludes the market rent applied at \$15.00 per square foot is reasonable based on the market rents referred to in Aurora. Petitioner applied a vacancy rate at 8%. Some minimal deductions for management and replacement reserves are appropriate as applied.

Petitioner's witness also presented the sales comparison approach to value the subject. Three retail sales used were in different areas than the subject and ranged from \$136.17 to \$174.75 per square foot. Two listings were presented, one of a former Walgreens and the other of an Office Depot store, ranging from \$151.41 to \$159.98 per square foot. After adjustments were made, the sales/listings ranged from \$136.17 to \$157.28. Although outside of the subject area, Comparables 3, 4 and 5 are located in similar areas and have demographics comparable to the subject. The Board concludes that the value range applied by Petitioner's appraiser to the subject by the sales comparison approach at \$140.00 to \$145.00 is low and will be compared to the income capitalization approach conclusions.

Petitioner's appraiser also prepared a cost approach to value the subject but indicated it was not weighted in the conclusion of value.

Respondent's appraiser and expert witness, Gary J. Mycock, Certified General Appraiser and an employee of the Arapahoe County Assessor's Office, appraised the fee simple estate of the subject property with an effective appraisal date of June 30, 2010. The appraiser applied all three approaches to value the subject property. Mr. Mycock's conclusion of the highest and best use of the subject property is a free standing retail drug store.

In the analysis presented, the data used in general was reflective of the value for a Walgreens store, based primarily on data from other Walgreens facilities. The actual rental data from other Walgreens stores was applied in the income capitalization approach with adjustments. The sales of other operating Walgreens facilities were used, with the above market rents in place

at the time of sale, and adjustments were applied to reflect a fee simple interest rather than the leased fee interest.

Respondent's valuation presumes that the subject property will likely continue as a drugstore and the data from other drugstores, with adjustments, that reflect the fee simple interest, should be the primary data used to value the subject property.

Respondent's appraiser prepared a cost approach and suggested it had some validity in concluding a final value estimate because of the relatively recent year of construction in 2002 and because about 50% of the value was in the land.

The Board concludes that the adjustments to the Walgreens sales and rents for a leased fee interest should be significant enough to be reflective of what other well-located retail facilities are being sold and rented for in the open market. The subject location caters to a national credit retail user. Sales and leases of drugstores to other drugstore users in the subject area would be the ideal data to use in the valuation of the subject; no such sales or leases were presented for the Board's consideration. The testimony of Ms. Anna Pelts, a Walgreens employee and witness for Petitioner, indicated that drugstores generally do not sell or lease to other drugstore users in Colorado. She testified that most sales and lease agreements involving Walgreens facilities restrict sales to a similar user.

The Board concludes that the market for the subject, if available in the open market for sale or lease as of June 30, 2010, would be to a single tenant retail user, which is reflective of the existing use. Some adaptations may be necessary to the subject to attract a different user. Sales and rental data from other free-standing retail facilities in the subject area would be the most helpful in valuing the fee simple interest of the subject. Such sales are necessary to use in adjusting the above market lease in place to a market rent. The Walgreens lease is based on the cost to build and represents a leased fee interest. The rents from other good quality facilities in similar areas would be appropriate to use to estimate market rent and derive a fee simple interest for the subject.

The adjustments applied to the sales, rents and costs in Respondent's appraisal report were not sufficient enough to be reflective of what the general retail user would be willing to pay for the subject property. The Board finds that the conclusion of \$3,300,000 from Respondent's appraisal report overstates the fee simple market value of the subject for the 2011 and 2012 valuation years.

The Board has placed the most weight in valuing the subject property for ad valorem purposes on the data presented in Petitioner's appraisal report. The rental data specifically is generally reflective of the subject location and surrounding demographics in the area. The market rental data for the Aurora and Southeast areas from the CBRE report suggests an average asking rental rate in Aurora (subject area) for the second quarter of 2010 of \$13.58 per square foot and in the Southeast area of \$16.27 per square foot. The vacancy percentage in Aurora is 12.5% for this time period. The Board concludes that the rental rate at \$15.00 is reasonable for the subject with a vacancy rate of 7%; slightly less than the 8% applied by Petitioner.

The Board considered and read both articles presented at the September 24, 2012 hearing, Petitioner's Exhibit C, and Respondent's Exhibit 1, Addendum F. The Board also accepted Petitioner's data related to equalization in valuation, however no testimony was allowed concerning it. The Board had indicated to both parties, that the Board would determine what weight would be given to the data. The Board concluded that sufficient information was provided to reach the decision of a fee simple value for the subject and no weight was given to the equalization data.

The Board concluded that the highest and best use of the subject property, if exposed on the open market, with a willing buyer and seller, would be to develop the property with a free standing retail building that is attractive to a national credit tenant. The most important factors in valuing the property are the market data in the subject area, actual rents and sales.

To estimate a fee simple market value of the subject property as of June 30, 2010, the Board applied the following values using the income capitalization approach:

Market rent- \$15
Vacancy rate- 7%
Management fee- 3%
Reserves- \$.10 per square foot
Capitalization rate- 8.5%-9.0%

The data above suggested a value range of \$149.00 to \$158.00 per square foot for the subject property.

The sales data range presented by Petitioner's appraiser in the sales comparison approach was from \$140.00 to \$145.00 per square foot which the Board concluded was low.

The Board concludes a subject value based on the parameters from the income capitalization approach at \$152.00 per square foot. This value applied to the subject's 14,490 square feet indicates a fee simple market value of \$2,202,480.

ORDER:

Respondent is ordered to reduce the 2011 and 2012 actual value of the subject property to \$2,202,480. The Arapahoe County Assessor's Office is directed to change their 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).

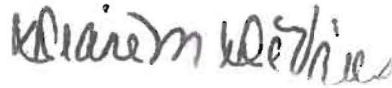
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 21st day of November, 2012.

BOARD OF ASSESSMENT APPEALS

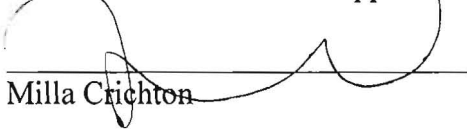


Diane M. DeVries



Brooke B. Leer

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



Milla Crichton

