

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DIAGONAL COMMONS LLC,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 61815</p>
<p><i>AMENDED ORDER</i></p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 8, 2013, Gregg Near and MaryKay Kelley presiding. Petitioner was represented by Eric R. Steiner, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

**3405 Penrose Place, Boulder, Colorado
Boulder County Schedule No. 1463291-16-001**

The subject property is an 11,370 square foot multi-tenant office building. The two story frame structure was built in 1980 on a 37,422 square foot lot with 39 paved parking spaces. It features include 14 office suites, two sets of stairs (no elevator), a set of restrooms on each level, and air conditioning.

Respondent assigned an actual value of \$1,740,000 for tax year 2012 but is recommending a reduction to \$1,340,000. Petitioner is requesting a value of \$1,126,638.

Both Petitioner and Respondent presented market approaches, Petitioner concluding to a value of \$1,340,466 and Respondent to a value of \$1,345,000. The parties stipulated to Respondent's value of \$1,345,000; the market approaches were not discussed during the hearing. Neither party considered the cost approach appropriate due to difficulty in estimating physical depreciation.

Petitioner's witness, Roger Bruhn, Managing Principal of Property Tax Service LLC, presented two income approaches: the average of 2009 and 2010 actuals with a capitalization rate of 8.7% and concluding to \$908,227; and the same average adjusted to triple net and concluding to \$800,862.

Mr. Bruhn estimated a vacancy rate of 13% based on the building's actual rate of 10%, a CoStar survey reflecting a 10% vacancy, and testimony regarding a depressed market. He derived a capitalization rate of 8.7% from four sales in the Greater Denver area, acknowledging that three were 1031 exchanges and that the fourth was a mix of retail and offices.

Petitioner's requested value of \$1,126,638 reflected both the income approach and the stipulated market value.

Respondent presented a triple-net income approach for an indicated value of \$1,338,000.

Respondent's witness Wally T. Harris, Certified General Appraiser, presented a market-based income of \$11.50 per square foot or \$124,396. He relied on confidential information provided by eight property owners reporting net leases of \$10.92 to \$22.00 per square foot. Ross Report data was supportive.

Mr. Harris estimated a vacancy loss of 10% based on the Ross Report for mid-year 2010. He applied an expense rate of 10% per the Ross Report, concluding to a net operating income of \$100,760. His capitalization rate of 7.5% was based on five Boulder County properties reported by Co Star with rates between 6.07% and 7.82%; most weight was assigned to properties two at 7.52% (close to the subject and similar in size and age) and four at 7.82% (similar in size and age). Deducting \$5,000 for deferred maintenance, Mr. Harris concluded to a capitalized income of \$1,343,000.

Respondent's recommended value (\$1,340,000) was derived from both the income and market approaches.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect.

The Board finds Respondent's income approach more convincing: Petitioner's actual income and expense data was considered but not felt to be supported by the market; and Petitioner's approach encompasses all of 2010, part of which is post-base period. The Board considers Petitioner's rents to be low and finds Respondent's market rents more persuasive. The Board finds that Respondent's vacancy rate of 10% was supported by market data, CoStar, and the Ross Report and the expense rate of 10% was also supported by the Ross Report.

The Board applied a management fee and replacement reserves to Respondent's effective gross income of \$111,956: a rounded management fee of 5% (\$5,600 rounded) reflects the subject property's multiple tenants; a rounded replacement reserve of **\$.35** per square foot or \$4,000. These calculations produce a net operating income of **\$91,160**. Respondent's capitalization rate of **7.5%**,

which was derived from the Boulder market rather than Petitioner's Greater Denver area data, is given most weight, and value by the income approach is estimated to be \$1,215,467.

The Board gives more weight to the income approach (\$1,215,467) than the stipulated market approach (\$1,345,000), concluding to a final value of \$1,250,000.

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to \$1,250,000.

The Boulder 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.

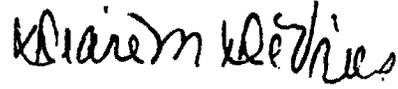
Section 39-8-108(2), C.R.S.

DATED and MAILED this 12th day of September, 2013.

BOARD OF ASSESSMENT APPEALS



Gregg Near



MaryKay Kelley

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

Milla Lishchuk

