

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.:62424

Petitioner:

LINCOLN COURT MEDICAL LLC,

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
EQUALIZATION.**

AMENDED ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 4, 2014, Louesa Maricle and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2013 actual value of the subject property.

1.

Regarding complaints made by both parties concerning the hearing time allotted, the Notices of Hearing, with the time allotted, were mailed on November 27, 2013, providing ample advance notice. The Board Chair confirmed that neither party filed a Motion requesting a longer hearing. The parties did not object to the time allotment or request additional time for the hearing until the morning of the hearing. Because of a scheduling constraint for one of the Board Members, the hearing time was not extended by the Board.

Regarding Petitioner's complaint concerning the manner in which hearing time was tracked and allotted, the Board finds that both parties were given equal time. Petitioner's initial presentation was limited by the Board Chair because of the parties' concern about a shorter hearing, but Petitioner was given a compensatory rebuttal period at the end of the hearing. The Board concludes that the time allotted to each party was fair and not punitive to Petitioner as claimed.

In connection with this same complaint, Petitioner contends that it was unable to offer complete testimony in support of the petition, or present adequate rebuttal of Respondent County's appraisal and expert testimony. The Board finds that testimony presented by Petitioner along with the 79-page Consulting Assignment report prepared by Petitioner's witness and admitted as evidence was adequate to present Petitioner's depth of analysis. With regard to Petitioner's claim that it was

unable to offer adequate rebuttal, both parties knew in advance of the hearing how much time was allotted and it was up to each party to determine how best to present its case in that time. The Board offered both parties the option to submit closing arguments in writing, but neither party accepted that opportunity.

2.

Petitioner agreed to stipulate to Respondent's Exhibit A. Petitioner objected to the admission of Respondent's Rebuttal Exhibit contending that it was not delivered timely because it was not filed three days prior to the hearing as required by the BAA Rule 11. In response, Respondent argued that the calculation of the three-day deadline includes the day of the event, *e.g.* the hearing. Thus, including the day of the hearing in the calculation, Respondent contended that the Rebuttal Exhibit, which was served upon Petitioner two business days before the hearing, was timely.

According to the BAA Rule 11 (b), "three business days prior to the hearing all reply documentation pertaining to the evidence submitted in the 10 business day exchange of documentation must be exchanged with all parties." Pursuant to Colo. R. Civ. P. 6, "[i]n computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run is not to be included."

Pursuant to BAA Rule 11 (b), the day of the event from which the designated period of time begins to run is the day of the hearing because the Rule states that the reply documentation is due three business days **prior to the hearing**. In other words, the day of the hearing is the triggering event for calculating the due day for the reply documentation and is not included in the computation. Thus, according to the Colorado Rules of Civil Procedure and the Board's Rule 11, the day of the hearing is not included in the computation of the three-day deadline for filing of the rebuttal documents.

The hearing in this matter was held on Tuesday, February 4, 2014. The three business day deadline, not including the day of the hearing in the computation, falls on Wednesday, January 29, 2014. Respondent's Rebuttal Exhibit was served upon Petitioner on Thursday, January 30, one day late. Accordingly, Respondent's Rebuttal Exhibit is hereby stricken from the record as untimely.

3.

Subject property is described as follows:

**7889 South Lincoln Court
Littleton, Colorado 80122
Arapahoe County Schedule No. 2077-34-1-10-002**

The subject is a two story medical office building containing 18,464 rentable square feet. 17,641 square feet is above grade and the remainder is in the basement. The building is located southeast of the intersection of S. Broadway and E. Mineral Avenue. Littleton Adventist Hospital is located north of the business park containing the subject.

Petitioner presented the following indicators of value:

Market:	\$1,661,760
Cost:	Not Provided
Income:	\$1,571,312

Petitioner is requesting an actual value of \$1,600,000 for the subject property for tax year 2013.

Petitioner's witness, Mr. Todd Stevens, presented a market approach comprised of four comparable sales ranging in sale price from \$1,600,000 to \$4,240,000 and in size from 24,380 to 31,838 square feet. This represented a price range between \$57.50 and \$133.17 per square foot of building area. After adjustments were made, the sales ranged from \$67.27 to \$129.18 per square foot.

Mr. Stevens testified his sales 1 and 3 were the best indicators of value with sale 3 as the most similar to the subject. The sales occurred between December 2010 and August 2011. Sale 3 was adjusted upward to make it equal in location. Sales 1 to 3 were older and adjusted upward; sale 4 was newer and adjusted down. All of the sales except sale 3 were adjusted for features such as inferior economic characteristics, physical characteristics, and size differences. A unit value of \$90.00 per square foot was concluded and applied to the total rentable area leading to a value conclusion by this approach of \$1,661,760.

Mr. Stevens developed an income approach to derive a value of \$1,571,312 for the subject property. Eight comparable leases were presented ranging from \$17.00 per square foot on a full service basis to \$19.44 per square foot on a triple net basis. From this information, Mr. Stevens concluded to a triple net rate of \$12.00 per square foot to be applied to the above grade area and a triple net rate of \$7.50 per square foot to be applied to the basement area. A Common Area Maintenance (CAM) charge of \$13.80 was adopted.

From this potential income, Mr. Stevens deducted a 10% vacancy. From this effective gross income, additional expenses of 5% for management and 10% for operating, maintenance and reserves were subtracted. Mr. Stevens then capitalized the annual net income at an 8.3% rate that was derived from a regional publication. The capitalization rate was then "loaded" with an additional 2.56% for property taxes. Capitalizing annual net income of \$170,685 at a rate of 10.86% resulted in a value conclusion by this approach of \$1,571,312.

Mr. Stevens reconciled the two indications and gave most weight to the income data. A final value estimate of \$1,600,000 was adopted.

Respondent presented the following indicators of value:

Market:	\$3,400,000
Cost:	\$3,800,000
Income:	\$3,400,000

Respondent's witness Jeff Hamilton, a Certified General Appraiser, presented a market approach consisting of four comparable sales ranging in sale price from \$1,327,500 to \$6,000,000 and in rentable area from 9,401 to 38,560 square feet. After adjustments were made, the unit price for the sales ranged from \$183.57 to \$239.59 per square foot of rentable area.

Sales were adjusted for location, for differences in size, year of construction, proximity to a hospital, physical features and occupancy level at the time of sale. Sales 1, 3 and 4 reflected a narrow adjusted range of \$183.57 to \$189.42. Mr. Hamilton reconciled to a unit value of \$185.00 per rentable square foot. Application of this unit price to the rentable area of the subject resulted in an indicated value of \$3,400,000 (rounded).

Mr. Hamilton used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$3,800,000.

Three comparable land sales were presented ranging in size from 49,441 square feet to 137,650 square feet and in sale price from \$13.67 to \$24.78 per square foot. After adjustments, the sales indicated a range from \$17.09 to \$17.34 per square foot which was reconciled to a unit value of \$17.25 per square foot. Application of the adjusted unit value to the site size resulted in a land value estimate of \$750,000 (rounded). Cost estimates of \$3,492,505 for building and basement plus \$65,000 for site improvements were concluded resulting in an estimated cost new of \$3,557,505. Depreciation from all causes totaled \$901,374 for a depreciated value of \$3,073,557. Addition of the previously estimated land value resulted in a value estimate by the cost approach of \$3,800,000 (rounded).

Mr. Hamilton used the income approach to derive a value of \$3,400,000 for the subject property.

Seven leases of occupied units within the subject building were presented. The average contract rent determined was \$23.56 per square foot per year with an average reimbursement of \$11.51 per square foot. Four comparable rentals were also presented from similar buildings. The rents, all consummated in the base period, were from \$19.44 NNN to \$23.51 modified gross per square foot. Mr. Hamilton reconciled to a market rent of \$20.00 per square foot on a NNN basis.

From this potential income, Mr. Hamilton deducted a 15% vacancy. From this effective gross income, total additional expenses of 8% were deducted for management, administration and reserves. Mr. Hamilton then capitalized the net operating income at 8.5% derived from a regional publication, analysis of additional comparable sales and use of the Band of Investment. Capitalizing net operating income of \$288,777 at a rate of 8.5% resulted in a value conclusion by this approach of \$3,400,000 (rounded).

Mr. Hamilton reconciled the three indications and gave most weight to the sales and income approaches. A final value estimate of \$3,400,000 was adopted.

Respondent assigned a value of \$3,400,000 for the subject property for tax year 2013 but is

recommending a reduction to the CBOE value of \$3,060,000.

The Board determined the primary areas of contention were the quality of finish and location of the subject building. Petitioner contends the subject is a class “C” building that has never had medical tenants and is not considered a part of the hospital campus. Petitioner believes Respondent has relied upon better quality buildings and used income from medical tenants to unfairly inflate the value of their property. Respondent contends the subject is a class “B” building finished for dental use equivalent to medical finish. Respondent also considers the subject to be sufficiently proximate to the hospital to benefit from synergy as a part of the larger medical campus.

Colorado case law requires that “[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . .” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

The Board finds that Petitioner’s witness, Mr. Stevens, did not provide adequate explanation or evidence to support the adjustments he made to his comparable sales for location, economic characteristics, or physical characteristics. Also, sales 2 and 3, very similar to one another, were adjusted in different directions for physical characteristics without explanation. The Board finds that Petitioner’s sales 2, 3 and 4 were identified by Respondent’s appraisal witness as “distressed”, “short sale”, and “REO”, respectively. Sales 2 and 4 are also characterized as a “distressed sale” and an “REO” sale, respectively, in the sale comparable data sheets included in Petitioner’s Exhibit 1. Sales of this sort can be used to support market value if it can be determined through the confirmation process that there was no atypical seller motivation in the form of discounted sale price, or other seller concessions of any sort. The Board finds that Petitioner’s witness did not present any compelling evidence to demonstrate that Sales 2, 3, and 4 were not adversely affected by atypical seller motivation. Petitioner’s sales all had high vacancy rates ranging from 28.3% to 61.4%. The marketing periods (days on the market) were provided for 3 of the 4 sales and they ranged from 33 to 70 days, which were all near the low end of the marketing period expectations cited in the Burbach and Associates Real Estate Investment Survey included in Petitioner’s Exhibit 1. Therefore, the Board is not persuaded that Petitioner’s market approach produces a credible indication of value.

The Board also had no confidence in Petitioner’s income valuation. Petitioner’s agent determined a NNN lease rate (meaning net of property tax, insurance and maintenance) then applied additional expenses totaling 15% for management, operating, maintenance and reserves. This effectively overstates the appropriate deductions for a NNN lease. It appears to the Board that by basing the operating, maintenance and reserves expense estimate on 10% of the effective gross income, which includes the tenant reimbursement for common area maintenance (CAM), the expense may be overstated by the percentage of CAM reimbursement. As tests of reasonableness, the Board compared Mr. Stevens’ estimate of CAM less management and taxes, and the conclusion of NOI to the actual operating history provided by Petitioner for 2011. The \$193,033 CAM expense less management and taxes used by Mr. Stevens is significantly higher than the 2011 actual recoverable expense total less management and taxes of \$116,288. Mr. Stevens’ NOI of \$170,685, before a deduction for the tax burden, is significantly lower than the actual NOI provided by Petitioner for

2011 of \$332,557.86, which is after the tax deduction. Even accounting for the potential difference in income between year-end 2011 and June 30, 2012 (the date of value), Petitioner's conclusion of NOI appears unreasonably low.

ORDER:

The petition is denied.

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-nine 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-nine days after the date of the service of the final order entered).

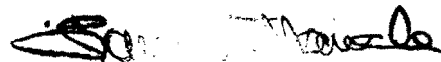
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 16th day of March, 2014.

BOARD OF ASSESSMENT APPEALS



Louesa Maricle

Gregg Near

Gregg Near

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

Milla Lisichuk

Milla Lisichuk

