

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 64478

Petitioner:

LSI RETAIL I, LLC,

v.

Respondent:

JEFFERSON COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 27, 2014, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Writer Mott, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2011.

The subject property is described as follows:

**8134 S. Kipling Parkway, Littleton, CO
Jefferson County Schedule No. 451561**

Testimony relative to land sales and acceptance of witnesses as experts was incorporated into this hearing from Docket No. 64699.

The property consists of a single story retail building located at the southeast corner of the intersection of S. Kipling Pkwy. and Chatfield Ave. in Unincorporated Jefferson County. The free standing building contains 14,657 square feet according to information provided by Respondent. The building is masonry construction, was constructed in 2003, as a build-to-suit for the Eckerd drug store chain that sold their operations to CVS in 2004. CVS subsequently vacated the property. The building is reported to be in overall average condition and as of the date of value and was 100% occupied by a single retail tenant.

Petitioner is requesting an actual value of \$636,000 for the subject property for tax year 2011. Respondent provided an appraisal reflecting a value of \$1,830,000 for tax year 2011. The

Board of Commissioner's (BOCC) assigned value for tax year 2011 was \$1,835,500. Respondent is recommending a reduction in value to the appraised value of \$1,830,000.

Petitioner presented the following indicators of value:

Cost:	\$830,000
Market	Not Developed
Income:	\$636,000

Relying solely on the income approach, Petitioner concluded to an indicated value of \$636,000 for the subject property.

Petitioner's witness, Mr. Mike Shafer, with Property Tax Refund Consultants, LLC, presented a cost approach reflecting a replacement cost new for the subject of \$845,341 including site improvements. After deducting 20% for physical depreciation and 25% for economic obsolescence, Petitioner's witness concluded to the depreciated cost for the subject's improvements of \$507,205. Mr. Shafer concluded to the land value based on four comparable sales to be \$323,000 or \$4.22 per square foot, arriving to the subject's value of \$830,205 via the cost approach. The value was rounded to \$830,000 in the reconciliation.

Mr. Shafer also presented a market (sales comparison) approach that included three comparable sales. No discussion or adjustments to these sales was accomplished, and no weight was given to the market approach in the conclusion of value.

Petitioner's witness also presented an income approach to derive a value of \$635,400 for the subject property. A direct capitalization model was used and consisted of gross income of \$11.00 per square modified gross based on a review of the rental rate for the subject, as well as the rental rate of another tenant (Salvation Army) in the center. A long term vacancy and collection loss was estimated at 15% based on a review of the Burbach & Associates Real Estate Investment Survey, and non-reimbursable expenses were estimated at \$4.75 per square foot. The net operating income of \$63,540 was then capitalized at a 10.00% overall rate resulting in the indicated value of \$635,400, rounded, via the income approach. Petitioner's witness indicated that the income approach received the greatest amount of consideration in determining the final conclusion of value. The value via the income approach was rounded to \$636,000 in the reconciliation.

Mr. Shafer testified that the rental rate and vacancy and collection loss used in Respondent's direct capitalization model were not reflective of market conditions, and did not consider the actual leasing and operation of the property. Mr. Shafer also testified that the property suffered from the negative economic trends that occurred during the statutory base period, which resulted in the 25% deduction for economic obsolescence used in the cost approach.

Respondent's witness, Mr. Brian Cassidy with the Jefferson County Assessor's Office, did not develop a cost approach. In terms of a market approach, four sales were submitted, but similar to Petitioner, no discussion or adjustments to these sales was accomplished, and no

weight was given to the market approach in the conclusion of value. Respondent did develop an income approach. A direct capitalization model was used and consisted of income based on a \$18.00 per square foot triple net (NNN) rental rate. A long term vacancy and collection rate was estimated at 5%, and non-reimbursable expenses were estimated at \$4.75 per square foot. The net operating income of \$181,014 was then capitalized at a 9.90% overall rate including property tax load resulting in an indicated value of \$1,830,000 rounded. Mr. Cassidy testified that his estimated triple net lease rate and estimated vacancy and collection loss accurately reflected market conditions for the subject given its corner influence and single tenant occupancy.

The significant differences between Petitioner's and Respondent's conclusions of value were found in the estimate of market rent (\$11.00 v. \$18.00) and in the estimate of vacancy and collection loss (15% v. 5%). Both parties considered the income approach to be the best indication of value.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2011 valuation of the subject properties was incorrect.

After careful consideration of the testimony and exhibits presented in the hearing, the Board concurs with the parties that an income approach should be given primary weight relative to the final opinion of value. After review of the variables found in both the exhibits and testimony used by both Petitioner and Respondent, the Board concludes that the variables used in Respondent's income approach are most supportable, with the exception of the market rental rate. The Board concludes, based on the data and testimony, that a \$15.00 NNN rental rate is more indicative of the market for this type of space during the base period. This concluded \$15.00 per square foot rental rate is based on testimony, as well as the rent roll provided by Petitioner. As noted, other than the market rental rate, the Board finds that the remaining variables used in Respondent's model, including the 9.9% overall rate, the 5% vacancy and collection loss for a single-tenant building, and the estimate of non-reimbursable expenses to be most persuasive. These variables are reflected in the direct capitalization model that follows:

Gross Income				
	Square footage	14,657	sf @ \$15.00	\$219,855
Total Gross Income		<u>14,657</u>		<u>\$219,855</u>
Vacancy Factor		5.00%		<u>\$10,993</u>
Effective Gross Income				<u>\$208,862</u>
Expenses NNN psf			@ \$4.75	\$69,621
Net Operating Income				\$139,241
Overall Rate				<u>9.90%</u>
Stabilized Value				\$1,406,477
	round			\$1,405,000
	per square foot			\$95.86

ORDER:

Respondent is ordered to reduce the 2011 actual value of the subject property to \$1,405,000.

The Jefferson County Assessor is directed to change his 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-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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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).

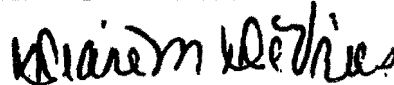
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

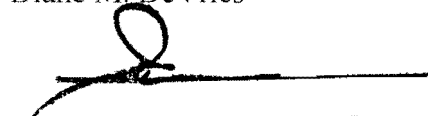
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 5th day of November, 2014.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



James R. Meurer

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



Milla Lishchuk