

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

Docket No.: 64511

Petitioner:

CHERRY CREEK LFS, LLC,

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 30, 2015, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Mitch Behr, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2011 and 2012.

The parties stipulated to the expertise of both parties' witnesses and the admittance of both parties' exhibits, subject to cross examination.

Subject property is described as follows:

**300 University Boulevard
Denver, Colorado
Denver County Schedule No. 0512209023000**

The subject property consists of two small retail buildings on a 12,500 square foot lot. The larger building offers 3,866 square feet that was 80% occupied by two tenants during the base period. A second smaller building of 756 square feet was occupied by a dry cleaner. The buildings were constructed in 1976 and reported to be in good condition and well maintained.

Petitioner contends that the current retail use of the subject was and remains the highest and best use. Respondent contends that the actual retail use was no longer the highest and best use, and that the subject should be valued as a redevelopment site.

Petitioner is requesting a value of \$1,000,000 for the subject based on the multi-tenant retail use in place during the base period. Respondent assigned an actual value of \$1,951,000 for tax years 2011 and 2012 based on land value as a redevelopment site.

Petitioner presented the following indicators of value:

Market:	\$1,109,280
Cost:	Not included
Income:	\$926,968

Petitioner's witness, Mr. Todd Stevens, of Stevens & Associates Cost Reduction Specialists, Inc., presented four comparable sales ranging in sale price from \$294.92 to \$418.41 per square foot and in size from 4,849 to 23,735 square feet. The sales occurred between January 2005 and June 2010, with all but one sale from the extended base period. After adjustments were made, the sales ranged from \$214.48 to \$262.48 per square foot. Based on the market approach, Petitioner presented an indicated value of \$240.00 per square foot or \$1,109,280 for the subject property.

Mr. Stevens also presented an income approach to derive a value of \$926,968 for the subject property. A market rental rate of \$20.00 per square foot net of expenses was applied to the subject's 4,622 square feet of rentable space. The analysis of market rent included a review of two leases from the subject along with lease information from six comparable retail properties. Deductions from income included 5% for vacancy and 5% as an allowance for maintenance and reserves. A capitalization rate of 9.0% was applied to reach a value of \$926,968 using the income approach.

Petitioner is requesting an actual value of \$1,000,000 for the subject property for tax years 2011 and 2012.

Respondent presented the following indicators of value:

Market:	\$1,950,000
Cost:	Not applied
Income:	Not applied

Respondent's witness, Keith Erffmeyer, Denver Assessor, presented six land sales ranging in sale price from \$144.00 to \$260.06 per square foot and in size from 6,537 to 25,000 square feet. No adjustments were made to the sales. The greatest consideration was given to the sale of an adjacent site (Respondent's Sale 2) for \$200.00 per square foot. The site was redeveloped for restaurant use subsequent to the August 2006 sale. Mr. Erffmeyer testified that he gave moderate weight to Sales 1, 5 and 6, which indicated a range in value of \$160.00 to \$260.06 per square foot. Little to no weight was given to Sales 3 and 4, which represented the lower end of the range. A value of \$156.00 per square foot was indicated by Respondent.

Respondent assigned an actual value of \$1,951,000 to the subject property for tax year 2011 and 2012.

In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P. 2d 146 (Colo. 1988), the Court held that “reasonable future use of property may be considered in determining its present fair market value.” However, the Court also noted that, “Speculative future uses cannot be considered in determining present market value for tax assessment purposes.”

In *Arlberg*, Justice Erickson specifically stated that “if an assessor is allowed to drastically increase an assessment based upon future use, such an increase should be subject to the strictest judicial scrutiny. By definition, even a ‘reasonable’ future use is to a large degree speculative because it allows for the taxing of non-existent improvements of an assumed type and quality.”

Respondent provided limited information concerning the comparable land sales relied on in the valuation of the subject as a redevelopment site. Petitioner provided considerable documentation and testimony concerning Respondent’s land sales as rebuttal evidence. Land Sale 1 was shown to be a vacant site that has not yet been developed since its purchase in March 2006. Petitioner questioned the reliability of Land Sale 2, questioning the economics of the restaurant, valued by the Respondent at just under \$3 million dollars, being built on a site that reportedly sold for \$5 million. Neither party was able to independently verify the details of that sale. Sales 3 and 4 involved the existing building owner’s purchase of the land leases that encumber the properties, with no redevelopment subsequent to purchase in 2006 and 2007. Land Sale 5 reflected the purchase of just one of four parcels that were assembled for development. Sale 6 was shown by Petitioner to be a parking garage that is part of a larger center that remains in use, with no redevelopment plans identified.

Respondent provided insufficient probative evidence or testimony to show to the Board that the current use of the subject as leased retail space was not the highest and best use of the property. Of the land sales presented by Respondent, only two had been redeveloped. Further, rebuttal information presented by Petitioner called into question the reliability of these sales. Redevelopment of the subject was viewed by the Board as “speculative” with inadequate support provided that an alternative use would be financially feasible, or maximally productive to provide a higher return than the current use.

Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property was incorrect for tax years 2011 and 2012. Petitioner relied on both the market and income approaches, with adequate support presented. The Board was convinced that there had been a limited number of transactions during the base period within the competitive market area; in fact both parties presented data from the extended base period. Additionally, Mr. Erfmeyer testified that Petitioner’s presented value was likely accurate for the subject as an existing multi-tenant retail property.

The Board concludes that the actual value of the subject property should be reduced to \$1,000,000 for tax years 2011 and 2012.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on actual value for the subject property of \$1,000,000 for tax years 2011 and 2012.

The Denver 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-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 12th day of February, 2015.

BOARD OF ASSESSMENT APPEALS

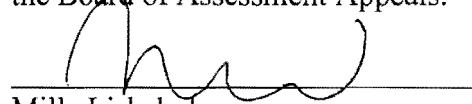


Debra A. Baumbach

Sondra Mercier

Sondra Mercier

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


Milla Lishchuk

