

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

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 64699**

Petitioner:

**LSI RETAIL III, 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 properties are described as follows:

**8184 S. Kipling Parkway, Littleton, CO  
Jefferson County Schedule No. 451558**

**8164 S. Kipling Parkway, Littleton, CO  
Jefferson County Schedule No. 451559**

**8144 S. Kipling Parkway, Littleton, CO  
Jefferson County Schedule No. 451560**

All three properties are located on pad sites in the same retail center, and all properties are considered to be in overall average condition. The property located at 8184 S. Kipling Parkway consists of a 3,028 square foot branch bank building (Bank of the West) constructed in 2003, and located on a 33,252 square foot pad site.

The property located at 8164 S. Kipling Parkway consists of a 3,601 square foot fast food restaurant building (KFC) constructed in 2004, and located on a 37,535 square foot pad site.

The property located at 8144 S. Kipling Parkway consists of a 3,176 square foot fast food restaurant building (Arby's) constructed in 2003, and located on a 33,252 square foot pad site.

The parties used different methodologies in valuing the subject properties. While Respondent utilized the cost approach to value all three properties, Petitioner relied on both cost and market approaches in valuing the KFC and Arby's properties and used cost approach in deriving a value for the bank parcel. The parties agreed that their cost approach values for the buildings (not including the land) were similar and stipulated to the following building values via the cost approach:

Address	Use	Schedule No.	Stipulated Bldg. Values
8184 S. Kipling Pkwy.	Bank	451558	\$285,935
8164 S. Kipling Pkwy.	KFC	451559	\$270,445
8144 S. Kipling Pkwy.	Arby's	451560	\$242,385

Taking into consideration the stipulated building value of the bank property, Petitioner is requesting a total value of \$1,560,935 for tax year 2011. This composite value was concluded by Petitioner based on the development of a cost approach for the bank property (which included the stipulated value of the building), and the sales comparison approach for the fast food restaurant buildings. In the analysis, the values of the pad sites were concluded at \$4.36 to \$4.40 per square foot. Petitioner's individual values are broken down as follows:

Address	Use	Schedule No.	Value Via Cost Approach	Value Via Market (SC) Approach	Concluded Values
8184 S. Kipling Pkwy.	Bank	451558	\$430,935	N/A	\$430,935
8164 S. Kipling Pkwy.	KFC	451559	\$435,445	\$600,000	\$600,000
8144 S. Kipling Pkwy.	Arby's	451560	\$387,385	\$530,000	\$530,000
					\$1,560,935

Taking into consideration the stipulated building values per the cost approach, Respondent amended their appraisal to reflect a value of \$2,877,705. This composite value was concluded by Respondent based on the development of a cost approach for all of the buildings. In the analysis, the value of the pad sites were concluded at \$20.00 per square foot. Respondent's individual values are broken down as follows:

Address	Use	Schedule No.	Stipulated Bldg. Values	Land Values	Concluded Values
8184 S. Kipling Pkwy.	Bank	451558	\$285,935	\$665,040	\$950,975
8164 S. Kipling Pkwy.	KFC	451559	\$270,445	\$750,700	\$1,021,145
8144 S. Kipling Pkwy.	Arby's	451560	\$242,385	\$663,200	\$905,585
					\$2,877,705

The Jefferson County Board of Commissioners assigned values for the three properties are as follows:

Address	Use	Schedule No.	BOE Assigned
			Values
8184 S. Kipling Pkwy.	Bank	451558	\$607,900
8164 S. Kipling Pkwy.	KFC	451559	\$992,000
8144 S. Kipling Pkwy.	Arby's	451560	\$892,300
			\$2,492,200

To summarize the above, Petitioner is requesting a total value of \$1,560,935 for tax year 2011. Respondent provided an appraisal reflecting a total value of \$2,877,705; however, is deferring to the Board of Commissioner's assigned value of \$2,492,200 for tax year 2011.

Relative to testimony, Petitioner's agent, Mr. Mike Shafer of Property Tax Refund Consultants, LLC presented a cost approach concluding land values for the individual pad sites ranging from \$4.36 to \$4.40 per square foot based on four comparables sales. These four sales ranged in sales price from \$3.10 to \$4.37 per square foot, and were adjusted for location, square footage, and visibility. Replacement costs were based on the Marshall Valuation Service Manual and resulted in an estimated depreciated replacement costs for each property as referenced below:

Address	Use	Schedule No.	Value Via
			Cost Approach
8184 S. Kipling Pkwy.	Bank	451558	\$430,935
8164 S. Kipling Pkwy.	KFC	451559	\$435,445
8144 S. Kipling Pkwy.	Arby's	451560	\$387,385

Mr. Shafer also presented a market (sales comparison) approach for the two fast food restaurant properties that included six comparable sales ranging in sales price from \$650,000 to \$1,050,000. The major adjustments to the sales consisted of square footage and year of construction. Petitioner's witness reconciled the adjusted sales reflecting the values below.

Address	Use	Schedule No.	Value Via
			Market (SC) Approach
8184 S. Kipling Pkwy.	Bank	451558	N/A
8164 S. Kipling Pkwy.	KFC	451559	\$600,000
8144 S. Kipling Pkwy.	Arby's	451560	\$530,000

Mr. Shafer testified that, unlike Respondent's analysis, both cost and market approaches should be used to support the opinions of value. Mr. Shafer further testified that the pad site values used by Respondent in the cost approaches were not market transactions, not supported by the data presented in the appraisal report, and that all three properties suffered from the negative economic trends that occurred during the statutory base period. Petitioner's concluded values via both approaches are restated below:

Address	Use	Schedule No.	Concluded Values
8184 S. Kipling Pkwy.	Bank	451558	\$430,935
8164 S. Kipling Pkwy.	KFC	451559	\$600,000
8144 S. Kipling Pkwy.	Arby's	451560	\$530,000
			<u>\$1,560,935</u>

Respondent's witness, Mr. Brian Cassidy with the Jefferson County Assessor's Office, also presented a cost approach which incorporated a market approach using five land sales. These five sales ranged in sales price from \$15.23 to \$30.54 per square foot, and no adjustments were applied. Mr. Cassidy averaged the five sales and ultimately concluded to a pad site value for the subject properties at \$20.00 per square foot. Mr. Cassidy testified that pad sites such as the subject typically sell on a per pad price, rather than a price per square foot. Within Respondent's cost approach, the replacement costs were based on the Marshall Valuation Service Manual and resulted in an estimated depreciated replacement costs referenced below. As noted, building values were stipulated, and no market approach was developed by Respondent.

Address	Use	Schedule No.	Stipulated Bldg. Values	Land Values	Concluded Values
8184 S. Kipling Pkwy.	Bank	451558	\$285,935	\$665,040	\$950,975
8164 S. Kipling Pkwy.	KFC	451559	\$270,445	\$750,700	\$1,021,145
8144 S. Kipling Pkwy.	Arby's	451560	\$242,385	\$663,200	\$905,585
					<u>\$2,877,705</u>

The primary area of disagreement between Petitioner and Respondent consisted of the value of the three individual pad sites given that improvement values had been stipulated as they relate to the cost approach. Petitioner contends the values should range from \$4.36 to \$4.40 per square foot, and Respondent contends that the value for each pad equates to \$20.00 per square foot.

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

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 that the pad site comparables used in Respondent's cost approach resulted in reasonable pad values for the subject properties. Although the data and analysis provided by Respondent in its appraisal report was extremely marginal in both quantity and quality, the Board concludes that the recent sale comparables consisting of pad sites in anchored centers similar to the subject, as opposed to the larger stand-alone lots used by Petitioner, best translates into the market value for the subject properties.

The Board found that the comparables used by Petitioner were not reliable as they were not pad sites, they were significantly larger than the subject sites and were not located within

anchored shopping centers. The Board was convinced that the pad sites are distinguishable because they are sold on per site rather than per square foot basis, and therefore gave limited weight to Petitioner's non pad site comparables. Moreover, the Board did not consider Petitioner's sales (stand-alone restaurants or properties intended for use as self-storage, adult day care, office buildings, etc.) to be sufficiently comparable to the subject's bank and fast food restaurant parcels. In addition, some of Petitioner's sales were too far removed from the subject (Dacono), or were located in less-developed, less-traffic areas to be considered comparable.

Taking into account the parties' cost approach stipulations as to the improvements' values, the Board believes that the remaining land has sufficiently high value to uphold the original assigned values. The Board was not convinced that the total values of the subject parcels as a whole (improvements and land included) should be reduced below the original assigned values.

### **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 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 5<sup>th</sup> day of November, 2014.

BOARD OF ASSESSMENT APPEALS

*Diane M. DeVries*

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Diane M. DeVries

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James R. Meurer

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

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Milla Lishchuk

