BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **WEINGARTEN MILLER FIEST, LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 67556**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 25, 2016, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The subject property is described as follows:

16961 E. Lincoln Ave. Parker, CO
Douglas County Account No. R0423517

The property consists of a masonry single story commercial, branch bank building located at the northeast corner of E. Lincoln Ave. and S. Jordan Rd. in the King Soopers anchored Stonegate Retail Center in the Town of Parker. The building contains 3,660 square feet, was constructed in 2001, and is equipped with a drive-thru banking island and canopy. Zoning is Commercial/PD through Parker, and lot size is 1.33 acres. Access to the subject is from the north via the private roads incorporated into the retail center. All utilities are publicly provided. The property is 100% occupied by US Bank, and is reported to be in overall good condition. The parties are in agreement relative to the physical characteristics of the subject.

The exhibits and testimony provided by both parties indicate that the subject is encumbered by a ground lease. However, no additional information was provided relative to this lease other than an indication that it was short term and had expired County data indicate that the property (land and improvements) have only one account number and one ownership (i.e. Weingarten Miller Feist, L.L.C.). Petitioner and Respondent have agreed that the ground lease, assuming one exists, does not encumber and has no impact on the value of the subject. In other words, the property is to be valued in fee.

Petitioner is requesting an actual value of $530,000 for the subject property for tax year 2015. Respondent provided an appraisal reflecting a value of $1,237,000 which supports Respondent's assigned value of $1,089,311 for tax year 2015. A table reflecting the individual values provided by Petitioner and Respondent is as follows:

Petitioner		
	Cost	not developed
	Income	$459,000
	Market	$567,300
	Concluded (Office Use)	$530,000
	Land Value	$447,400
Respondent		
	Cost	$1,231,000
	Income	$1,238,000
	Market (Bank Building)	$1,244,000
	Market (Retail Use)	$1,239,600
	Land Value	$581,000
	Concluded	$1,237,000
Assigned CBOE Value		$1,089,311

Petitioner's witness, Ms. Darla K. Jaramillo of Sterling Property Specialists, Inc. presented an appraisal employing a market (sales comparison) approach to support her land value, and market and income approaches to support her land and improvement value. Ms. Jaramillo testified that she used rents and sales for office properties in her analysis, given that it was her opinion that the highest and best use for the property and ultimate use for the building would be office.

Ms. Jaramillo's analysis leading to her estimate of land value consisted of the review of six comparable sales located in the southeast suburban submarkets. The comparables ranged from 40,511 to 75,272 square feet, and prices for the sales ranged from $6.44 to $10.13 per square foot prior to adjustment, and $6.76 to $9.12 per square foot subsequent to adjustment. Five of the sales occurred in the 18 month primary statutory base period. The significant adjustments to the sales consisted of location, land area, corner influence visibility/exposure, and access. With emphasis on all of the comparables and averaging their adjusted sales prices, Ms. Jaramillo concluded to a final value of $7.70 per square foot or $447,400, rounded, for the subject's 1.33 acre parcel of land.

Petitioner did not develop a replacement cost for the improvements citing its lack of reliability stemming from the uncertainty in estimating depreciation and obsolescence.

In addition to an opinion of land value, Ms. Jaramillo developed a market approach that included eight comparables ranging in sales price from $550,000 to $900,000, and in size from 3,760 square feet to 6,540 square feet. Four of the sales were office buildings, three of the sales were retail, and one was mixed use. The major adjustments to the sales consisted of leasing, location, gross building area, condition, visibility/exposure, and access. After adjustments were made, the sales ranged from $126.50 to $186.65 on a per square foot basis. With emphasis on all of the comparables and most weight to Sale No. 4, and averaging their adjusted sales prices, Ms. Jaramillo concluded to a final value of $155 per square foot or $567,300, rounded, for the subject's land and improvements. Relative to the final opinion of value, Ms. Jaramillo placed most weight on the conclusion from this approach.

Petitioner also presented an income approach to derive a value of $459,000 for the subject property. A direct capitalization model was used and consisted of office rental income estimated at $22.00 per square foot full service. This rental rate was based on published sources, Sale Comparable No. 8 in the market approach, and a lease executed by an affiliate of the owner. A long term vacancy and collection factor was estimated at 10% based on the 100% occupancy of the subject and published sources, and expenses were estimated at 30% of effective gross income or $21,740. The net operating income of $50,728 was then capitalized at an 8.00% overall rate which was derived from published sources plus a 3.05% effective tax rate (total of 11.05%), resulting in the indicated value of $459,000 via the income approach.

Ms. Jaramillo argued that, given her conclusion of the highest and best use for the subject, the best comparables to use for comparative purposes were office buildings rather than the bank and retail buildings employed by Respondent. It was testified by the witness that bank sales were not used in the analysis due to the typical inclusion of personal property in the sale transactions. Ms. Jaramillo further argued that there was no direct access to the subject property, that the $288,000 adjustment for the larger than typical site used by Respondent in the crosscheck section of their market approach was improper and without support, and that several of Respondent's comparables reflected a leased fee rather than a fee simple estate resulting in inflated sales prices.

Respondent's witness, Mr. Stephen M. Snyder, SRA with the Douglas County Assessor's Office, testified that the highest and best use for the subject was a branch bank property and provided an appraisal that developed all three approaches to value. The analysis leading to his estimate of land value consisted of the review of five comparable sales located in the Parker submarket. The comparables ranged from 26,136 to 75,272 square feet, and prices for the sales ranged from $7.11 to $13.60 per square foot prior to adjustment. Four of the sales occurred in the 18 month primary statutory base period. Qualitative adjustments to the sales consisted of location, access/visibility, land area, and date of sale resulting in a mean adjusted sales price of $9.71 per square foot. With emphasis on Comparable No. 4, Mr. Snyder concluded to a final value of $10.00 per square foot or $581,000, rounded, for the subject's 1.33 acre parcel of land.

Mr. Snyder did develop a depreciated replacement cost estimate for the improvements based on data provided by the Marshall Valuation Service. Total cost new exclusive of land and depreciation was estimated at $786,123, depreciation from all sources was estimated at

$136,478, resulting in a depreciated value of $649,644. Adding the land value of $581,090 resulted in a replacement cost new estimate of $1,231,000, rounded.

In addition to the cost approach, Mr. Snyder developed a market approach that included four bank related type comparables ranging in sales price from $920,000 to $3,295,000, and in size from 3,673 square feet to 6,940 square feet. Qualitative adjustments to the sales consisted of market conditions, location, access/visibility, building size, and utility. With emphasis on Comparables Nos 1 and 3, Mr. Snyder concluded to a final value of $340 per square foot or $1,244,000, rounded, for the subject. As a test of reasonableness, Mr Snyder also reviewed four non-bank retail sales. The sales price for these non-bank sales ranged from $675,000 to $1,750,000, and in size from 3,516 square feet to 4,900 square feet. Qualitative adjustments to the sales consisted of condition and age. With emphasis on Comparables Nos 2 and 3, Mr. Snyder concluded to a final value of $260 per square foot or $951,600, rounded. After an adjustment of $288,000 for his opinion of the contributory value of the larger subject lot, Mr. Snyder concluded to a total value of $1,239,600 using this second model as a cross-check for the first model which used the bank sales. With most emphasis on the model analyzing bank related sales, Mr. Snyder concluded to a value of $1,244,000 via the market approach. The market approach was given the most weight in the final conclusion of value.

Mr. Snyder also developed an income approach to derive a value of $1,238,000 for the subject property. A direct capitalization model was used and consisted of retail and bank facility rental income estimated at $21.50 triple net per square foot based on multiple comparables from published sources and his market approach. A long term vacancy and collection factor was estimated at 5% based on the 100% occupancy of the subject and published sources, and triple net expenses were estimated at 5% of effective gross income or $3,738. The net operating income of $71,018 was then capitalized at a 7.5% overall rate which was derived from published sources, resulting in a preliminary indicated value of $950,000, rounded. Mr. Snyder adjusted this value by $288,000 for his opinion of the contributory value of the larger subject lot resulting in a concluded total value via the income approach of $1,238,000.

Mr. Snyder argued that, given his conclusion of the highest and best use for the subject, the best comparables to use for comparative purposes were bank related facilities as represented in the first model of his market approach. Mr. Snyder stated that the fact that some of these buildings sold with leasing in place did not warrant an adjustment or alter his analysis. Mr. Snyder further argued that the subject, given its exposure and access as well as its inclusion in a larger retail center, did not lend itself to the speculative office use suggested by Petitioner.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

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 in the hearing, it is the conclusion of the Board that the subject was constructed as a branch bank building with drive-thru capacity, has been 100% occupied by a bank tenant since construction, and therefore this existing use reflects the highest and best use for the property relative to market value. The Board is in agreement with the parties that given the size, use, and construction of the subject, the market approach represents the best indication of value for the subject, especially if this analysis includes bank type properties as comparables. The Board finds that Respondent's first market approach model using bank sales to be most credible, that the adjustment to these sales were market-driven and supportable, and that there was no foundation for the argument that a possible leasehold interest impacted the sale price of these properties. Although the Board has some questions about the $288,000 site adjustment used by Respondent in their second market approach model and in the income model, this adjustment becomes moot given that the most weight in the Board's conclusion is based on the first market model that does not employ this adjustment.

With respect to the highest and best use of the subject property, the Board finds Mr. Snyder's testimony to be the most credible. Given Mr. Snyder's credible testimony, the Board believes that the highest and best use of the subject property is its current use as a bank.

While reasonable future use is relevant to a property's current market value for tax assessment purposes, the Board believes that it is much more likely that the subject property will continue to be used as a bank and that this use represents the subject's highest and best use (i.e. the use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, that results in highest land value. See *Board of Assessment Appeals, et al, v. Colorado Arlberg Club*, 762 P.2d 146, 152 (Colo. 1988)). The Board does not agree with Ms. Jaramillo that the subject's highest and best use would be office use.

The Board was not swayed by Petitioner's arguments relating to Respondent's Comparable Nos 1 and 3. Although Respondent's Comparable No. 1 involved a bank that was converted to a dental practice after the purchase, the Board agrees with Respondent that the subject's access, exposure and location in a large retail center makes it likely that the subject property will continue to be used as a bank. In contrast, the location of Comparable No. 1 is inferior in traffic count, access, and proximity to major shopping, making it better suited than the subject for an office use.

Moreover, the Board was not persuaded by Petitioner's argument that Respondent's Comparable No. 3 was not a valid comparable sale because it was not exposed to an open market and because its purchase price included personal property. According to the testimony of Respondent's witness, Mr. Snyder, this transaction occurred on July 19, 2012 and involved First Citizens Bank & Trust's purchase of the banking real estate after its acquisition of the bank business from the FDIC. The property was not listed for sale or exposed to an open market as First Citizens Bank & Trust had been occupying the bank since January 2011 and intended to purchase the property. Mr. Snyder testified that First Citizens Bank & Trust was required to purchase the property for a purchase price established by a third party's appraisal reflecting a fee simple market value. Respondent's witness was able to verify that the purchase price reflected in the third party's appraisal did not include any bank personal property. The Board finds credible Mr. Snyder's assertion that the purchase price did not include personal property. And finally, based on information presented, the Board found that lack of market exposure did not negatively affect the sale's reliability and that Respondent appropriately included it in its market approach.

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 25th day of May, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

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

SEAL

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