

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

Docket No.: 68084

Petitioner:

GARVIN PARTNERS LTD,

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 26, 2016, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Noah Cecil, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The subject property is described as follows:

**2328-2332 15th Street, Denver, CO
Denver County Schedule Nos 160949574, 160949582, 160949591, 160949604**

Petitioner and Respondent stipulated to admission of Mr. Todd Stevens and Mr. Richard Phinney as expert witnesses, and further stipulated to admission of Petitioner's Exhibit 1 and Respondent's Exhibit A. Petitioner's Exhibit 2 is admitted in part with pages 2-56 and the bottom half of page 57 stricken from the record. Petitioner requested to strike Respondent's Exhibit B due to untimely receipt. Respondent requested that only Pages 28 and 29 be stricken. The Board admitted Exhibit B noting Petitioner's objection relative to timeliness.

The property consists of a masonry office building constructed in 1951 and renovated in 1983 located northeast of the intersection of 15th Street and Platte St., just outside of the Central Business District of the City and County of Denver and near Confluence Park. The building contains a rentable area of 52,531 square feet, including an 8,272 square foot finished basement. Walls are brick and painted sheetrock, floors are tile and carpet, HVAC is via a forced air system located at ground level, and the building is serviced by an elevator. The building rated as Class B, and is reported to be in overall above average condition. All utilities are publically provided. Lot size is 50,500 square feet or 1.16 acres resulting in a land to building ratio of 1.04:1, and

zoning is CMX-5 through Denver. The occupancy level of the building as of the valuation date was 67%.

Petitioner is requesting an actual value of \$6,800,000 for the subject property for tax year 2015. Respondent provided an appraisal reflecting a value of \$11,900,000 which supports the assigned value of \$10,212,600 for tax year 2015.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market	\$7,113,820
Income:	\$6,759,265

Petitioner testified that the cost approach was considered, but not applied.

Petitioner's witness, Mr. Todd Stevens, President of Stevens and Associates Cost Reduction Specialists, Inc. developed a market (sales comparison) approach that included four comparables ranging in sales price from \$4,300,000 to \$6,615,500. and in size from 26,930 square feet to 55,209 square feet. Sales prices on a per square foot basis ranged from \$112.70 to \$159.67. All of the sales were office buildings, three of which were located in the Central Denver submarkets and one located in the Cherry Creek submarket. The major adjustments to the sales consisted of location, economic characteristics (leasing), and square footage. Petitioner made no adjustment for date of sale. After adjustments were made, the sales ranged from \$107.07 to \$142.37 on a per square foot basis. With emphasis on all of the comparables, Mr. Stevens concluded to a final value of \$140.00 per square foot for the above ground leasable area, and \$94.36 for the basement area resulting in a total value of \$6,976,806 via the market approach.

Mr. Stevens also presented an income approach to support his concluded value. After a review of four lease comparables as well as the leasing of the subject, a direct capitalization model was used and consisted of gross income of \$12.75 per square foot triple net or \$564,302 for the above grade space and \$8.25 per square foot or \$68,244 for the basement space. Parking and cell tower income was estimated at \$46,184 resulting in total gross income of \$678,730. A long term vacancy and collection loss was estimated at 10% based on a review of published sources. Non-reimbursable expenses were estimated at 10% of effective gross income. The net operating income of \$549,772 was then capitalized at an 8.00% overall rate derived from published sources, which resulted in the indicated value of \$6,872,144 via the income approach.

Petitioner's exhibits indicate that the income approach was given primary consideration in the concluded value of \$6,800,000. Mr. Stevens argued that the variables, specifically the estimated rental rate employed by Respondent in the income approach was not reflective of the market as of the valuation date, was not consistent with the actual leasing on the property, and the overall rate of 6.5% (excluding tax load) was not supportable for this type of building. Mr. Stevens further argued that that sales comparables used by Respondent were superior to the subject relative to location.

Respondent presented the following indicators of value:

Cost:	\$10,385,300
Market	\$12,344,800
Income:	\$11,513,700

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser with the Denver County Assessor's Office, developed a cost approach. However, he gave it minimal weight in the conclusion of value due to the age and remodel of the property. Mr. Phinney concluded to the land value of the subject four parcels at \pm \$102.00 per square foot, or \$5,133,700.

Mr. Phinney developed a market approach that included four comparables ranging in sales price from \$3,700,000 to \$13,173,651, and in size from 13,979 square feet to 48,583 square feet. Sales prices on a per square foot basis ranged from \$253.27 to \$324.05, and all of the sales were office buildings located in the Central Platte, Central Business District or Northwest Denver submarkets. The major adjustments to the sales consisted of age, quality, physical and functional characteristics, and zoning. After adjustments were made, the sales ranged from \$227.94 to \$277.91 on a per square foot basis. With emphasis on Comparables Nos. 1 and 2 due to their proximity to the subject, Mr. Phinney concluded to a final value of \$235.00 per square foot or \$12,344,800 for the subject land and improvements.

Mr. Phinney also developed an income approach to support his conclusion of value. A direct capitalization model was used, and consisted of gross income estimated at \$29.00 per square foot full service for the above grade space, and \$18.00 per square foot full service for the basement resulting in potential gross income of \$1,432,410. There rental rates were based on a lease survey developed by Mr. Phinney. Parking income was estimated at \$30,968 and miscellaneous income (cell tower) was estimated at \$16,539. Vacancy and collection loss was estimated at 5%, and full service expenses were estimated a \$7.28 per square foot. The net operating income before real estate taxes of \$1,025,871 was then capitalized at a 8.91% overall tax loaded rate, which resulted in the indicated value of \$11,513,700 or \$219.18 psf, via the income approach.

Respondent placed equal weight on the income and market approaches in arriving at the concluded value of \$11,900,000. Mr. Phinney argued that Respondent's Comparables Nos. 1 and 2 were most similar to the subject and that the rents and expenses of a full service lease basis and overall rate used in his income approach were supportable within the market.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect.

After careful consideration of the testimony and exhibits presented in the hearing, the Board concludes that the income approach should be given primary weight relative to the final opinion of value for an income producing, office property of this type, size, and vintage. After review of the variables found in the exhibits and testimony used by both Petitioner and Respondent, the Board recalculates the direct capitalization model and resulting value as follows:

Gross Income						
	Above Grade	44,259 nrsf	@	\$27.00	psf	\$1,194,993
	Basement	8,272 nrsf	@	\$18.00	psf	\$148,896
		52,531 nrsf				
	Additional Income					\$47,507
Total Income						\$1,391,396
	Vacancy & Collection Loss	5.00%				\$69,570
Effective Gross Income						\$1,321,826
	Expenses	\$7.28 psf				\$382,426
Net Operating Income						\$939,400
	Tax Loaded Overall Rate	7.0%+2.41%				9.41%
Indicated Value						\$9,982,999
	per square foot net rentable					\$190.04
	Rounded					\$9,985,000

Relative to the above recalculated model, the Board concurs with the variables contained in Respondent's income approach with the exception of the market rental rate for the above grade office space, and the base (prior to tax load) overall rate. Based on the exhibits and testimony, Respondent's estimated rental rate of \$29.00 appears to be at the upper end of a reasonable range, and Respondent's concluded overall rate at 6.5% appears to be at the lower end of a supportable range. After review of the rent comparables, the existing leasing on the subject, as well as the data supporting the overall rate, the Board concludes that a \$27.00 per square foot full service rental rate is more indicative of the market, and a 7.0% overall base is more supportable for this type of building in this location. The Board also agrees that the subject is best analyzed on a full service lease basis, as opposed to the triple net basis employed by Petitioner.

In addition to the above, Petitioner argues that the ±175% increase from the prior years' actual value is unreasonable. However, given that this is a *de novo* hearing, prior year assessments are not relevant to this proceeding.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to \$9,985,000.

The Denver 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 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 10th day of November, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

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

Milla Lishchuk

