

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CHP WADSWORTH MEDICAL LLC, MAKUTA PETER J., MAKUTA M.,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 68093</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 30, 2016, Louesa Maricle and Amy J. Williams presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties agreed to the admission of Petitioner's Exhibit 1 and 2 and Respondent's Exhibit A. Respondent's Exhibit B was not admitted due to untimely filing.

The subject property is described as follows:

**5920 South Estes Street
Littleton, Colorado 80123
Jefferson County Schedule No. 300013807**

The subject property is a 22,281 square foot, two-story, medical office building located on a 3.16-acre site. The subject office building was constructed in 2005 of reinforced concrete frame with a concrete block exterior and is of good quality and in average condition.

Petitioner is requesting an actual value of \$1,900,000 for the subject property for tax year 2015. Respondent assigned a value of \$3,232,000 for the subject property for tax year 2015.

Petitioner called Mr. Todd Stevens, President, Stevens & Associates Cost Reduction Specialists, Inc., as a witness. Referring to his consulting assignment report, Mr. Stevens testified that the subject was acquired by the current owner in October of 2014 for \$2,000,000. The property is located on a side street with residential and commercial uses to the right and a strip commercial center to the left. The subject lacks visibility from Wadsworth Avenue or Bowles Avenue. Further, Mr. Stevens testified that the subject was 34 percent vacant during the base period.

Mr. Stevens then reviewed his Sales Comparison Approach. Five sales were utilized, ranging in sale price from \$1,700,000 to \$4,100,000, or \$54.30 per square foot to \$162.51 per square foot. After adjustment the range narrowed to \$70.59 per square foot to \$107.51 per square foot. A value of \$1,999,933, or \$93.25 per square foot, was concluded for the subject property via the Sales Comparison Approach.

Mr. Stevens next reviewed his Income Approach. Five lease comparables were provided which supported a lease rate for the subject between \$11.00 per square foot and \$17.75 per square foot, on a triple net basis. Mr. Stevens selected a lease rate per square foot of \$11.00 based largely on a recent lease of 2,196 square feet within the subject building. After applying a 25 percent vacancy rate, 15 percent expense ratio and a capitalization rate of 8.0 percent, the Income Approach indicated a value of \$1,879,964, or \$84.38 per square foot for the subject.

After considering the approaches to value, Mr. Stevens concluded to a final value for the subject property of \$1,900,000.

During cross examination, Mr. Stevens explained that he selected a 25 percent vacancy rate. Considering market indicated vacancy for the subject was 16 percent and that actual vacancy for the subject was 34 percent, 25 percent was selected as reasonable. He went on to state that his economic adjustment is separate from a location adjustment and has to do with rental rates in the comparable neighborhoods as compared to the subject. Finally, other leases within the subject building were not considered as the leases were not new leases negotiated within the base period, rather amendments to older, existing leases.

Respondent called Mr. Robert D. Sayer, Commercial Appraiser, Jefferson County Assessor's Office, as a witness. Mr. Sayer described the subject location as near two major roadways though with limited visibility from both. The subject benefits from the surrounding commercial and residential influences and is convenient to employment centers in the area. Overall, the subject neighborhood is considered to be 50 percent developed. Mr. Sayer explained that ideally only leases executed during the base period would be utilized within the Income Approach. However, comparable leases of that variety are limited so data from leases in place during the base period were also considered.

Mr. Sayer reviewed the lease comparables utilized within his Income Approach. The five leases ranged between \$18.30 per square foot and \$28.69 per square foot, on a triple net basis. After qualitative adjustment, the lease comparables indicated a range greater than \$21.49 per square foot but less than \$28.68 per square foot, from which he selected a \$25.00 per square foot lease rate for the subject. He then applied a 14 percent vacancy rate, 8.0 percent expense ratio and an 8.0 percent

capitalization rate to conclude to a value of \$5,000,000, or \$246.60 per square foot, for the subject via the Income Approach.

Mr. Sayer then reviewed his Sales Comparison Approach. Five sales were utilized, ranging in sale price from \$1,900,000 to \$11,950,000, or \$146.25 per square foot to \$406.01 per square foot. After qualitative adjustment the sales indicated a value greater than \$196.77 per square foot but less than \$392.21 per square foot, with one sale indicating a value less than \$189.13 per square foot. A value of \$5,570,000, or \$250.00 per square foot, was concluded for the subject property via the Sales Comparison Approach.

After considering the approaches to value, Mr. Sayer concluded to a final value for the subject property of \$5,000,000.

Mr. Sayer testified that occupancy and sale price are correlated and that vacancy can be a product of poor management. Considering the subjects positive surrounding influences, he felt that subject vacancy could be reduced. Of the sales utilized, Sale No. 3 was the most "metro" location and Sale No. 4 was also used by Petitioner. Finally, Mr. Sayer indicated that he was not supplied reliable information on the subject rents. However, information provided reported a wide range of lease rates within the subject building.

During cross examination, Mr. Sayer agreed that the subject may be further than one mile from a hospital. He also stated that because some of the lease comparable information is gathered from potentially confidential sources, Jefferson County has a general rule to not disclose the address, or other identifying information, that could specifically identify the lease comparables. Petitioner's attorney, Mr. Olona, in an effort to more thoroughly vet the lease comparables presented by Respondent, asked Mr. Sayer if Lease No. 1 was the same as the Co-Star lease presented in Petitioner's Exhibit B, page 2-5. Mr. Sayer responded affirmatively. He also responded that Respondent Lease No. 3 was the same as the lease presented on pages 2-14 of Petitioner's Exhibit B. Further, Mr. Sayer did not agree that Lease No. 3 was superior to the subject regardless of the Co-Star Class A label or its LEED certification.

During re-direct, Mr. Sayer testified that the October 2014 sale of the subject for \$2,000,000 was an allocated portion of a bulk sale, not an arm's length transaction. Also, Respondent's Lease Comparable Nos. 1 and 2 are predominantly occupied by medical providers with the remaining lease comparables occupied by more general office tenants. Mr. Sayer stated that no rent roll had been provided to Jefferson County and that he had no information to support a higher than market vacancy rate for the subject.

Mr. Stevens was called as a rebuttal witness, pointing out that Respondent Lease Comparable No. 1 is located on the Swedish Medical Center campus and the lease rate was actually \$25.50. Also, Lease Comparable No. 2 has direct exposure to I-70 and is a superior property as compared to the subject. The subject is twenty minutes from the nearest hospital. not one mile as stated by Respondent. Relative to the sales used by Respondent, Mr. Stevens outlined their locations as being superior to the subject, specifically; Sale 1 is located adjacent to a hospital; Sale 2 is a five minute

drive to a hospital; Sale 3 is a hospital building; Sale 4 is located directly across from a hospital; Sale 5 is located on the St. Anthony's Hospital campus.

Respondent assigned an actual value of \$3,232,000 to the subject property for tax year 2015.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property 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). Petitioner's requested value is largely based upon one lease comparable. This lease is a recent, \$11.00 per square foot, triple net lease within the subject. While the Board agrees that the most recent lease within the subject should be considered, the \$11.00 per square foot rate is by far the lowest lease rate presented by either Petitioner or Respondent. The Board is also not persuaded that only leases executed within the base period can be used for comparison. Renegotiated and existing leases are additional market evidence that can, and would, be considered by market participants when executing and analyzing current leases. The Board finds it reasonable that the subject value would be above that of the \$2,000,000 base period bulk sale of the subject. Finally, while Petitioner did not present sufficient evidence to prove that the tax year 2015 value was incorrect, the Board considers the majority of Respondent's selected sale and lease comparables to be superior to the subject, resulting in a \$5,000,000 value that lacks credibility.

Although unnecessary to reach our decision for this appeal, the Board will address an issue that arose during the hearing concerning the rent comparable properties presented by the assessor on page 41 of Exhibit A. The Board believes that addressing this issue may be helpful to the parties in future proceedings before the Board.

In Exhibit A, Respondent noted that “the assessor receives financial data from individual property owners that include rental, vacancy, and expense information to assist the assessor in the process of valuation using the income approach to value”. Respondent further noted that, “The assessor's practice is to redact or exclude addresses and other information relating to the source of this financial information to preserve the confidentiality obligations of the Assessor in compliance with C.R.S. §24-72-204(3)(a)(IV)”. Consistent with these notations, Respondent did in fact redact or exclude information in its income approach on page 41 of Exhibit A, including the address of the comparable properties being used in the income approach. However, in response to questions raised by Petitioner's counsel during cross-examination, Respondent's witness confirmed the address for these comparable properties.

In response to questions from the Board, Respondent's witness stated that in some cases the information used for the rent comparable properties in his income approach was obtained from information submitted for other hearings, while in other cases, the information was obtained from sources such as Co-Star. According to the witness, it depends on the particular comparable property. The assessor's office has a general rule that it does not disclose the address of (or other information that could be used to identify) the particular rent comparable property because the information concerning the property used by the assessor in the income approach might have been obtained by the

assessor in a manner that makes the information confidential. According to the witness, in some situations, the assessor obtains the information from a taxpayer after telling them up front that the information will be held confidential by the assessor's office.

For purposes of this discussion, the Board does not find it necessary to address whether specific information in the assessor's possession is indeed "confidential" information that is not subject to inspection under the Colorado Open Records Act or is otherwise confidential. However, when a respondent in a BAA appeal elects to rely on truly confidential information which is not available for review by the taxpayer, the respondent may do so only by presenting the confidential data in such a manner that the source cannot be identified. See Section 39-8-108(5)(c), C.R.S.

The Board recognizes that allowing a respondent to present "blind" rent comparable properties (where the location of the property is not disclosed) may put the Petitioner at a significant disadvantage in terms of being able to cross-examine the Respondent's witness concerning the rent comparable properties. Accordingly, the Board may place less weight on such blind rent comparable properties than on rent comparable properties where the location is fully disclosed and where the petitioner has a fair opportunity to fully investigate the properties and compare them to the subject property. Given the potential credibility issues that may arise by using "blind" comparable properties, assessors may wish to independently verify the information for such properties from public sources or obtain a waiver from the confidential source in order to be able to present the comparable properties in their reports without using confidential information.

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 28th day of July 2016.

BOARD OF ASSESSMENT APPEALS



Louesa Maricle



Amy J. Williams

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



Milla Lishchuk

