

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

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 68225**

Petitioner:

**ESP PROPERTIES, LLC,**

v.

Respondent:

**DOUGLAS COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on April 5, 2016, Gregg Near and James R. Meurer presiding. Petitioner was represented by Eliot Hardy, President of ESP Properties, LLC. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**3750 Dacoro Lane Unit 125 Castle Rock, Colorado  
Douglas County Parcel No. 235134203006**

The subject is a commercial condominium unit located in the Meadows Professional Plaza Office Condominium Project in the northern section of the Town of Castle Rock, CO. The project was constructed in 2007, and the unit contains 903 square feet on one level. The interior of the unit is typical office finish, and the unit is occupied by a tenant. All utilities are publically provided. According to Respondent, the unit is considered to be in overall average condition with minimal deferred maintenance. The zoning of the project is PD through the Town of Castle Rock, and the land under the unit is a general common element of the project. According to Petitioner, the project was involved in a construction defect lawsuit with the original builder.

Petitioner is requesting an actual value of \$94,604 for the subject property for tax year 2015. Respondent provided an appraisal reflecting a value of \$180,600; however, is deferring to the Board of Equalization's (BOE) assigned value of \$176,085 for tax year 2015.

Petitioner's witness, Mr. Eliot Hardy, presented an income approach, and three sales of commercial condominium units to support his opinion of value. The income approach consisted

of three models. The first income model reflected the actual income generated from the property pursuant to the lease, no vacancy and collection loss, total expenses of \$7,795.17 including real estate taxes, net operating income of \$7,804.83, and a 8.25% overall capitalization rate. These variables concluded to a value of \$94,604. The second model used the same variables as the first except included a 13.9% vacancy and collection loss and concluded to a value of \$68,320. The third model used the same variables as the second model, except excluded real estate taxes from the expenses, and included these taxes in the tax loaded overall rate of 11.41%. The concluded value of the third model was \$87,583.

Mr. Eliot testified that the source of the income and expenses was the actual operation of the unit, the source of the vacancy and collection loss was from data provided by CoStar, and the source of the base overall rates was published data from Cushman and Wakefield, as well as from Douglas County. Overall, Mr. Eliot's concluded value via the income approach was \$94,604, with primary weight on his first income model.

In addition to an income approach, Mr. Eliot provided three sales of commercial condominium units located in the Meadows Professional Plaza. Sales prices ranged from \$82,000 to \$260,000, and dates of sale ranged from October of 2012 to June of 2014. During testimony it was indicated that Sale Nos. 1 and 3 were core and shell (unfinished) units, and Sale No. 2 was a finished unit. Mr. Eliot attempted no adjustments to these three sales to compare them to the subject unit, or conclude to any specific value.

Mr. Eliot testified that the subject is a commercial property and that Douglas County erred in not considering, pursuant to statute, a cost, and income approach to derive the opinion of value. Mr. Eliot further testified that the construction defect lawsuit did impact the value of the unit; however, no specific defects or cost to cure these defects were presented during the hearing.

Relative to the valuation provided by the county, Respondent's witness, Mr. Stephen M. Snyder, a Certified General Appraiser with the Douglas County Assessor's Office, developed a market (sales comparison) approach and presented four comparable sales to support his opinion of value. All of the sales were located in the Castle Rock and Lone Tree submarkets, and Comparable No. 3 was located in the subject project. The sale prices of the comparables ranged from \$185.19 to \$206.77 per square foot prior to adjustment. All of the three sales were finished units. After qualitative adjustments for location and condition, Mr. Snyder concluded to a value of \$200.00 per square foot resulting in a value of \$180,600 for the subject unit.

In addition to presenting his appraisal report, Mr. Snyder testified that he considered all three approaches (cost, income, and market) to value; however, concluded that the market approach was the most customary, appropriate, and applicable approach to arrive at an opinion of value given the characteristics of the subject. Mr. Snyder testified that, contrary to Petitioner's testimony, developing all three approaches to value for this type of property was not mandatory, as long as all three approaches were considered. Mr. Snyder further testified that any value impact of the construction defect lawsuit could not be quantified, and further pointed out that two of sales presented by Petitioner were unfinished core and shell units, thereby significantly dissimilar to the subject.

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

Colorado Revised Statutes require that all three approaches (e.g. cost, market, and income) approaches be *considered* in the valuation of commercial property. *See e.g.*, Section 39-1-103(5)(a), C.R.S. (“The actual value . . . shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal.”) Requirement in subsection (5)(a) that a property assessor give “appropriate consideration” to the income, market, and cost approaches does not require complete and documented calculations of each approach or an explanation of the reasons for excluding those not used. *ASARCO, Inc. v. Bd. Of Comm’rs of Lake County*, 916 P.2d 550 (Colo. App. 1995).

Moreover, one or more of three approaches may not be applicable in a particular case. The nature of the property may rule out consideration of one or more approaches or there may be insufficient data to allow all of the approaches to be used. *501 So. Cherry J. Venture v. Arapahoe Cty*, 817 P.2d 583 (Colo. App. 1991). “Appropriate consideration” of the cost approach, market approach, and income approach does not include documentation of inapplicable approaches. *CF & I Steel Corp. v. Patton*, 765 P.2d 586 (Colo. App. 1991).

Based on the exhibits and testimony, the Board concurs with Respondent that all three approaches were considered, as mandated by the Colorado law, in providing an opinion of value for the subject commercial condominium unit. Given that all three approaches were considered, the Board further concludes that Respondent exercised the proper discretion, judgment, and appraisal technique in concluding that the market approach was the most applicable, and market-driven approach for a property of this type.

As indicated in testimony, the use of a cost approach is not customary given that the unit is attached to other units in the project. Also as indicated, the use of an income approach is not customary, specifically as a primary approach to value, given the physical characteristics of the subject unit, and the fact that the majority of condominium units of this type are purchased for owner-occupancy rather than to generate an income stream for an investor. The Board agrees with Respondent, and concludes that the use of a market approach is the appropriate valuation model to render a supportable opinion of market value for the subject property.

As noted, Petitioner did not submit a market (sales comparison) approach but simply referenced three sales of commercial condominium units. No adjustments to these three sales were provided to compare them to the subject unit, and no specific value using these sales was concluded.

Respondent did develop a thorough sales comparison approach in which four sales were analyzed, and adjustments were provided to compare these properties to the subject. The sales used by Respondent were all located in the same or similar locations, and were representative of the market during the required statutory period.

The Board also finds that Respondent made appropriate adjustments to the comparable sales accounting for various differences in characteristics. The Board also concludes that given

Petitioner's lack of a supportable sales comparison approach, no impeachment of Respondent's conclusions of value could be reasonably accomplished.

**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 27th day of April, 2016.



**BOARD OF ASSESSMENT APPEALS**

Gregg Near

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