

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 68742

Petitioner:

EVERGREEN INDUSTRIAL PARK LLC,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 19, 2016, Sondra W. Mercier and Gregg Near presiding. Petitioner was represented by Phillip K. Larson, Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The subject property is described as follows:

**30706 Bryant Drive
Evergreen, CO 80439
Jefferson County Schedule No. 424283**

The subject is a two-story multi-tenant industrial warehouse constructed in 1998. The improvements are located on a hillside allowing ground level access to both floors. The gross building area according to the owner's leases and rent roll is 25,400 square feet equally divided between the two floors. As originally constructed, there were twenty-four units, but there are fourteen units as currently demised.

Petitioner presented the following indicators of value:

Market:	Not Applied
Cost:	Not Applied
Income:	\$1,175,000

Petitioner is requesting an actual value of \$1,175,000 for the subject property for tax year 2015. Respondent determined a value of \$2,286,200 for the subject property for tax year 2015.

Petitioner's witness, Mr. Wendell Huggins, testified that he had purchased the land, constructed the warehouse and self-manages the property.

Mr. Huggins stated that the industrial market in Evergreen is unlike that in the larger Denver metropolitan area because there are no large companies seeking space. The tenants in his building are all small start-up businesses many of which fail. The witness provided the Board with Exhibit 1 representing yearly income and expense items from 2009 through the first half of 2014. Exhibit 2 was also presented illustrating the rent rolls for the same periods. Exhibit 3, a two-year report of income and expenses, was also offered in order to stabilize the categories. In Exhibit 3, Mr. Huggins determined a gross income including expense reimbursements for the period from July 1, 2012 to June 30, 2014 of \$345,697.68. Total expenses of \$179,175.65 were reduced from the gross income leaving a net income for the two-year period of \$166,522.03.

During the two-year period, 4,576 square feet of the building was occupied by the owner's business. Mr. Huggins subtracted this area from the total resulting in a two-year average gross income of \$16.84 per square foot of building area. Applying this rate to the owner occupied space after a reduction for average vacancy of 8% resulted in an upward adjustment to the gross income of \$70,895.06, representing additional income accounting for "family use". The witness then applied an 8% management fee to the gross income prior to expense reimbursements after adjusting for the owner's space. The above calculations resulted in a two-year net income of \$204,822.09 and an annual net income of \$102,411.04.

After determining the annualized income, Mr. Huggins applied an 8.5% capitalization rate to determine a value of \$1,204,835.70. Citing deferred repairs of \$29,500 for drainage problems, the witness concluded to a market value of \$1,175,335.70.

Petitioner called Ms. Barbara Stoddard as a witness in commercial real estate. Respondent objected due to inadequate notice, no report on the background of the witness and no opportunity to review and investigate this witness. The Board admitted Ms. Stoddard's testimony over the objections giving it the weight the Board deemed appropriate considering the objection.

The witness testified that she has commercial real estate experience due to the management of her family's portfolio of over one million square feet of real estate and participation in 30 to 40 real estate transactions. Ms. Stoddard testified that an owner's decision to effectively reduce the agreed upon rate in order to keep the property occupied is not mismanagement. When questioned by the Board, Ms. Stoddard stated she was not managing any commercial property in Evergreen or other nearby mountain communities.

Respondent presented the following indicators of value:

Market:	Not Applied
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Cost:	Not Applied
Income:	\$2,520,000

Respondent's witness, Joel Cuthbert, a Certified General Appraiser, presented an income approach concluding to a market value of \$2,520,000. The Cost Approach was not applied. Mr. Cuthbert indicated there were sufficient land sales available but the required estimate of depreciation for an older property could exceed an appropriate margin of error that might lead to a conclusion not reflective of the actual market. Limited sales of multi-tenant industrial properties also left the Sales Comparison Approach (Market Approach) with insufficient information so this approach was also not applied.

Mr. Cuthbert analyzed the existing leases within the property and found both a mixture of tenants and a mixture of arrangements. Focusing upon the known triple net (NNN) leases, the witness calculated an average rate of \$9.17 per square foot for the 12,816 square feet of the building so encumbered. Mr. Cuthbert adopted a market rate of \$9.00 per square foot on a NNN basis.

Long term stabilized vacancy was estimated at 5%. After application of the above rates the effective gross income was concluded to be \$217,170. A 7% reduction was applied to represent management, reserves and miscellaneous expenses to determine net operating income (NOI) of \$201,968. Mr. Cuthbert considered information developed from surveys, local commercial agents and extracted rates from qualified base period sales to conclude to a capitalization rate of 8%. Application of this overall rate to the net operating income resulted in a value by the income approach of \$2,520,000 (rounded).

Respondent determined a value of \$2,520,000 for the subject property for tax year which supports the assigned value of \$2,286,200.

Petitioner contends Respondent has used an "incorrect basis" for valuation of the property. Petitioner also considers Respondent's report to be simply a "pro forma" and not reflective of the actual market. Evergreen's market is unique and the use of data from the Denver Metropolitan area is inappropriate. Because the market for industrial space in Evergreen is limited, with many business failures and move-outs, Petitioner has been limited in the ability to collect all amounts that are due under terms of the leases. Petitioner points to two warehouse competitors in the area that have failed. Petitioner also asserts it is more expensive to try to collect the losses in rent than the likely return from the collections. Petitioner's witness, Ms. Stoddard, supported this position by opining that it was not mismanagement to keep partially paying tenants and therefore avoid vacancy.

Respondent agrees that the Evergreen market is unique and has recognized that fact by relying upon the subject's lease information. Respondent contends the Evergreen market actually has a limited supply and a high demand for industrial warehouse property. To counter Petitioner's claims, Respondent alleged that the competitors did not fail but instead converted to condominium ownership in one case and changed the use in the other. Respondent's report is not a "pro forma" as asserted by Petitioner but is a site specific analysis conforming to the required standards of professional practice. Respondent dismisses Petitioner's Exhibit 3 as simply a summary of the owner's expenses not completed to the standards required by buyers.

The Board notes Mr. Higgin's efforts to manage and maintain the subject and understands his business strategy in striving for maximum occupancy. Mr. Higgins has asserted that decisions were made to stop collection efforts of amounts due under leases requiring tenants to reimburse expenses. These expenses were then assumed by Petitioner in order to keep the property occupied.

The definition of market value requires that both parties in a transaction be operating prudently, knowledgeably and in their own best interests assuming neither is under undue duress. While Respondent and Petitioner essentially came to a market rate of \$9 00/sf on a NNN basis, from that point the analyses differ significantly. Petitioner's analysis considers the valuation of the subject's leasing operation as managed by Mr. Higgins. Respondent's analysis, on the other hand, values the subject using variables as dictated by the current market.

The Board found Respondent's analysis, therefore, to be more objective and Respondent's value conclusion more representative of the subject's value in fee. The Board was convinced that Petitioner's analysis has resulted in a value opinion that understates the subject's actual value.

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

ORDER:

Petition in 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.

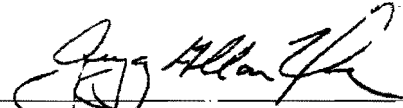
Section 39-8-108(2), C.R.S.

DATED and MAILED this 8th day of September, 2016.

BOARD OF ASSESSMENT APPEALS

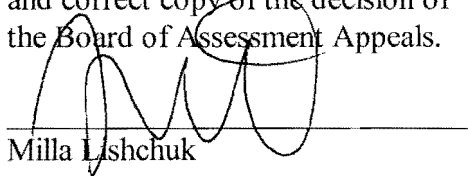


Sondra W. Mercier



Gregg Near

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



Milla Lishchuk