

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

Docket No.: 68845

Petitioner:

BP AIRWAYS LLC, ETAL,

v.

Respondent:

ADAMS COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 21, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioners were represented by Richard G. Olona, Esq. Respondent was represented by Kerri A. Booth, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax years 2013 and 2014.

Petitioners include BP Airways, LLC with an undivided interest of 63.6364%, Pacifica Airways, LLC with an undivided interest of 27.2727%, and Z-2 Airways, LLC with an undivided interest of 9.0909%.

The parties stipulated to the admittance of Petitioners' Exhibits 1 and 2, and Respondent's Exhibits A, B-1 and B-2. Mr. Todd Stevens, Stevens and Associates Cost Reduction Specialists, Inc and Mr. Ryan Pendleton, Certified General Appraiser with the Adams County Assessor's Office were accepted as expert witnesses pursuant to a stipulation by the parties.

Subject property is described as follows:

**2470 Airport Boulevard, Aurora, Colorado
Adams County Parcel No. 01821-33-2-01-005**

Based on the rent roll submitted by Petitioners, the subject property consists of a 331,923-square foot, multi-tenant industrial warehouse situated on a 16.83-acre site. The building was constructed in 2004, with no items of deferred maintenance noted by either party. Respondent's witness measured the building and concluded to a higher size of 332,075 square feet. The subject was 79.6% vacant as of 2nd quarter of 2012.

Petitioners are requesting a value of \$9,350,000. Respondent assigned an actual value of \$12,652,129 for tax years 2013 and 2014.

Mr. Todd Stevens, witness for Petitioners, presented the following indicators of value:

Market:	\$9,957,690
Cost:	Not applied
Income:	\$9,335,334

Mr. Stevens presented a market approach consisting of three comparable sales ranging in sale price from \$6,000,000 to \$24,500,000 and in size from 161,524 to 409,124 square feet, indicating an unadjusted range in value of \$30.00 to \$60.00 per square foot. After adjustments were made, the sales indicated a range from \$29.71 to \$34.13. Using the market approach, Mr. Stevens presented an indicated value of \$9,957,690 for the subject property based on a value of \$30.00 per square foot.

Mr. Stevens presented an income approach to derive a value of \$9,335,334 for the subject property. Ten lease transactions were analyzed to conclude to a rental rate of \$3.75 per square foot for the subject. Vacancy of 25% was concluded using CoStar data for the subject's submarket area. Expenses of 15% were deducted for operating, maintenance and reserves, resulting in net operating income of \$793,503. Investor survey data was used to determine a capitalization rate of 8.5%, resulting in a value of \$9,335,334.

With the greatest consideration given to the income approach, Petitioners are requesting an actual value of \$9,350,000 for the subject property for tax years 2013 and 2014.

Respondent presented the following indicators of value:

Market:	\$12,950,000
Cost:	\$17,420,000
Income:	\$13,740,000

Respondent's witness, Mr. Ryan Pendleton, presented a market approach consisting of six comparable sales ranging in sale price from \$5,475,000 to \$24,500,000 and in size from 119,970 to 409,124 square feet, indicating unadjusted values ranging from \$37.06 to \$59.88 per square foot. Mr. Pendleton applied qualitative adjustments, and concluded that sales 2, 3, and 4 should be given the greatest consideration. Those three sales indicated a range of \$37.06 to \$45.64 per square foot. Mr. Pendleton concluded to a value of \$12,950,000, rounded, using sales comparison, based on a value of \$39.00 per square foot.

Mr. Pendleton used Marshall Valuation Service, a state-approved cost estimating service, to derive a market-adjusted cost value for the subject property. Four land sales were analyzed to establish a value of \$2.50 per square foot for the subject site, equal to \$1,806,215. A depreciated replacement cost of \$15,272,591 was concluded for the structure and site improvements.

Entrepreneurial incentive (developer's profit) of 2% was added to indicate a total value of \$17,420,000, rounded, using the cost approach.

To develop the income approach, rental information from four similar properties was analyzed by Mr. Pendleton, who concluded to a rental rate of \$4.00 per square foot for the subject. A variety of market surveys were considered to establish a vacancy and collection loss of 10%. An additional deduction of 10% was taken for non-reimbursed operating expenses, plus an additional 2% deducted for reserves for replacement (rounded to \$24,000). Net operating income was calculated at \$1,099,078. An overall capitalization rate of 8.0% was applied to indicate a value of \$13,740,000, rounded, using the income approach.

In his reconciliation of value, Mr. Pendleton gave no weight to the cost approach, but relied on both the income and sales comparison approaches to conclude to a value of \$13,350,000, supporting the assigned value of \$12,652,129 for tax years 2013 and 2014.

After consideration of all three approaches to value, the Board agrees with the parties that the cost approach does not provide a reliable indication of value for the subject. The Board also evaluated the reliability of the witnesses, taking into consideration the contingency fee arrangement between Mr. Stevens and Petitioners as well as Mr. Pendleton's short time in the Colorado market.

The Board first considers the sales comparison approach to value. Of the nine sales presented by the parties, the sale of 2460 Airport Boulevard was found to be the most relevant. This sale at \$37.06 per square foot represents the buy-back of an adjacent vacant building (identified as a "sister" building to the subject) by the developer of the subject. Both parties included this sale in their analysis; however, it appears to be a sale that was not arms-length. One other sale used in common was of the building located at 22100 E. 26th Avenue; a building that was fully leased at the time of sale, as was Respondent's remaining four sales. Petitioner's remaining sale was of a building in Golden, which was not found to be as relevant by the Board. Overall, the Board gives limited consideration to the sales comparison approaches presented by the parties.

As the subject is an investment grade, multi-tenant property, the Board finds the income approach relevant to value. Mr. Stevens considered lease information from ten properties that indicated a range of \$2.15 to \$4.05 per square foot. The leases were dated between August 2010 and April 2012, all within the statutorily defined extended base period. Although Mr. Pendleton presented information regarding leases from four neighboring buildings, he was unable to identify when the leases were signed. The Board is persuaded that leases signed during the base period (or extended period) best represent the market on the date of value. Mr. Stevens' concluded rent of \$3.75 was well supported by the market data presented at hearing.

Both parties presented market data to support their vacancy rate conclusion. Mr. Stevens identified 19 buildings that were built after 1994 and had over 200,000 square feet of rentable space, all located within the subject's specific submarket. Petitioners' more specific survey of similar buildings indicated direct vacancy of 19.1%, increasing to 24% when sublease space is considered. The Board finds Petitioners' survey better supports vacancy of 20%.

Petitioners deducted 15% of effective gross income (EGI) or \$140,030 for non-reimbursed operating expenses, maintenance, and reserves for replacement. Respondent made a deduction of 10% for expenses or \$72,392. An additional 2% of (EGI) or \$24,000, rounded, was deducted for reserves for replacement. Using Respondent's methodology and a vacancy of 20% would result in a greater deduction than that of Petitioners'. A deduction of 15% of EGI is reasonable given the analysis presented by both parties.

Mr. Stevens derived a capitalization rate from the Summer 2012 - Burbach & Associates, Inc., investor survey. Based on a range of 7.25% to 9.50%, Mr. Stevens concluded to a capitalization rate of 8.5%. Respondent applied an 8.0% rate based on extraction from sales data that indicated a range of 6.0% to 9.0%. Respondent provided better market support for use of an 8.0% rate, which is also within the range indicated by Mr. Stevens.

Applying the previously discussed factors to Petitioners' indicated square footage of 331,923 taken from the rent roll, results in the following indicated value:

Potential gross income	\$3.75/sf	331,923 sf	\$1,244,711
Less Vacancy Allowance	20%		(\$248,942)
Effective Gross Income			\$995,769
Less Operating, Maint. And Reserves	15%		(\$149,365)
Net operating income			\$846,404
Capitalized value	8.0%		\$10,580,050

Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property for tax years 2013 and 2014 was incorrect. Respondent valued the subject as an investment grade warehouse that was operating at a stabilized occupancy (90% or greater occupancy) as of the date of value, when in fact, the subject was only 20% occupied at that time. Respondent contends that consideration of the high vacancy of the subject represents a valuation of the leased fee interest, not the fee simple estate required by Statute. The Board disagrees, as Petitioners used market supported vacancy, not the nearly 80% actual vacancy on the date of value.

The Board concludes that the actual value of the subject property should be reduced to \$10,580,050 for tax years 2013 and 2014.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on an actual value for the subject property of \$10,580,050.

The Adams County Assessor is directed to change his/her 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 6th day of January, 2017.



BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Sondra W. Mercier

Sondra W. Mercier

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

Milla Lishchuk

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