

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>HAB PROPERTIES LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 70192</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 13, 2017, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2015 and 2016.

The subject property is described as follows:

**12353 E. Easter Ave., Centennial, CO  
Arapahoe County Parcel No. 2075-25-2-21-001**

Petitioner and Respondent stipulated to the admission of Mr. Todd Stevens, Mr. Mark Kane, and Mr. Richard Chase as expert witnesses, and further stipulated to the admission of Petitioner's Exhibits 1 and 2, and Respondent's Exhibits A through I.

The property is located at the northeast corner of East Easter Ave. and South Quentin St. in the Airport/Dove Valley submarket of the City of Centennial. The property consists of a two-story Class B office building containing approximately 24,889 square feet of gross building area that was constructed in 2000 as a build-to-suit for a single tenant. The building is of average construction quality with exterior walls consisting of concrete block and metal panels, a vinyl membrane roof, and roof-mounted HVAC system. Interior finish is average and consists of commercial grade carpet, painted drywall walls, suspended ceilings, and fluorescent lighting. Site size is 4.07 gross acres, all utilities are publically provided, and zoning is M-U-PUD via Centennial. There are a total of 98 parking spaces on the property.

Relative to leasing, the building was originally master-leased to Dealer Information Systems (DIS) for an initial term of 20 years commencing at the completion of construction. Currently, the building is occupied by DIS and two other tenants that are subleasing space within the subject.

According to information included in the exhibits, the subject sold during the base period for \$4,100,000, or approximately  $\pm$ \$165.00 per square foot. Date of sale was November 5, 2013. This transaction was reported to be arm's length, and subject to a long term triple net lease.

Petitioner is requesting an actual value of \$2,150,000 for the subject property for tax years 2015 and 2016. Respondent's assigned value is \$4,036,000. Respondent provided an appraisal reflecting a value of \$4,000,000, and is recommending a reduction from the assigned value to the appraised value.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market	\$2,489,100
Income:	\$2,085,854

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 five comparables ranging in sales price from \$2,400,000 to \$7,500,000, and in size from 20,188 square feet to 85,935 square feet. Sales prices on a per square foot basis ranged from \$87.28 to \$167.18. All of the sales were office buildings located in the Denver submarkets. The major adjustments to the sales consisted of conditions of sale, location, age, economic characteristics (leasing), physical characteristics, and square footage. Petitioner made no adjustment for date of sale. After adjustments were made, the sales ranged from \$83.78 (an REO sale) to \$110.34 on a per square foot basis. With emphasis on all of the comparables, Mr. Stevens concluded to a final value of \$100.00 per square foot or \$2,489,100 for the subject land and improvements.

Mr. Stevens also presented an income approach to support his concluded value. A direct capitalization model was used, and consisted of gross income of \$16.00 per square foot full service or \$398,256 based on a review of the rental comparables, as well as a sublease executed in the subject during the base period. A long term vacancy and collection loss was estimated at 10% based on a review of published sources. Expenses were estimated at \$4.25 per square foot and reserves were estimated at 3% of EGI. The net operating income of \$241,891 was then capitalized at a 11.6% (including 3.6% for the tax load) overall rate derived from published sources, which resulted in the indicated value of \$2,085,854 via the income approach.

The income approach was given primary consideration in Petitioner's concluded value.

Mr. Stevens argued that the variables, specifically the estimated rental rate and expense structure employed by Respondent in the income approach were not reflective of the subject as

of the valuation date, and that Respondent's sales were not comparable to the subject. Mr. Stevens also argued that the \$4,100,000 sale of the subject during the base period was not at market. He testified that the 83.5% increase in the tax liability from the previous assessment period was unsupported, and that the mill or tax levy for the subject was excessive, resulting in a reduced market value. Mr. Stevens further argued that the subject's parking was inadequate and that the overall quality of the building was average.

Respondent presented the following indicators of value:

Cost:	Not Developed
Market	\$4,000,000
Income:	\$4,070,000

Respondent testified that the cost approach was considered, but not applied

Respondent's witness, Mr. Mark Kane, an Certified General Appraiser with the Arapahoe County Assessor's Office developed a market approach that included four comparables ranging in sales price from \$1,737,500 to \$5,892,000 including the sale of the subject in November of 2013, and in size from 12,066 square feet to 38,519 square feet. The major adjustments to the sales consisted of location, building square footage, age, and condition. Respondent made no adjustment for date of sale. After adjustments were made, the sales ranged from \$144.00 to \$175.14 on a per square foot basis. With emphasis on all of the comparables, Mr. Kane concluded to a final value of \$160.00 per square foot, or \$4,000,000, rounded, for the subject land and improvements.

Mr. Kane also developed an income approach to support his conclusion of value. A direct capitalization model was used, and consisted of gross income of \$14.50 per square foot triple net or \$360,920 based on his lease comparables. Mr. Kane used a triple net expense structure testifying that it was most indicative of a single tenant building. Long term vacancy and collection loss was estimated at 10% based on a review of published sources. Non-reimbursable expenses were estimated at 6.0% of EGI. The net operating income of \$305,338 was then capitalized at a 7.50% overall rate (not including taxes) derived from published sources, which resulted in the indicated value of \$4,071,000 via the income approach.

Respondent placed primary weight on both the market and income approaches in arriving at the concluded value of \$4,000,000.

Mr. Kane argued that Petitioner's use of the market and income approach understated value and disputed Petitioner's adjustment for economic conditions.

Respondent called Mr. Richard Chase as a second witness. Mr. Chase testified that he had concerns relative to Petitioner's rental rate and expense structure, specifically the adjustment for economic characteristics in the market approach. Mr. Chase indicated that the sale of the subject should be considered and was at market, that sublease rates should be given no weight, and that the REO sale used by Petitioner was not indicative of the market.

Subsequent to Respondent's testimony, Mr. Todd Stevens was recalled as a rebuttal witness and testified relative to his concerns on the variables used in Respondent's sales and income analyses and concluded value.

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). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes the following:

- The Board concludes that the use of an income approach best supports the market value for the subject property, and given the single-tenant nature of the subject, the use of a triple net lease structure is most appropriate.
- The Board places weight on the sale of the subject for \$4,100,000 during the base period. No evidence was presented to consider this sale anything but market.
- The Board questions the use of Petitioner's adjustment for "economic conditions" in the market approach. This adjustment lacks the analysis and support to be considered reliable.
- The Board finds Respondent's overall testimony regarding the assumptions, analysis, and conclusions in Respondent's report to be most credible in supporting a conclusion of market value for the subject during the tax years in question.

### **ORDER:**

Respondent is ordered to reduce the 2015 and 2016 actual value of the subject property to reflect Respondent's recommended value of \$4,000,000.

The Arapahoe 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 7th day of December, 2017.

**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

