

<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 EQUALIZATION.</b></p>	<p><b>Docket No.: 70397</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on April 3, 2018, Diane M. DeVries and Cherice Kjosness presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Subject property is described as follows:

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

The subject consists of a two-story Class B office building containing approximately 24,891 square feet (or 24,889 - both are used in Respondent's and Petitioner's reports) of gross building area that was constructed in 2001 as a build-to-suit for a single tenant. It is located in the Centennial Airport/Dove Valley area at the northeast corner of East Easter Ave. and South Quentin St. on a site of 4.07 acres. The exterior construction is concrete block and metal panels with a membrane flat roof. The interior finish is average for this class of building. The utilities are publicly provided, and the zoning is M-U-PUD from the City of Centennial. There were 98 parking spaces on the property on the assessment date, but there is excess land in the southeast corner of the lot that would allow for parking expansion. The northeast corner of the site is occupied by a drainage pond. The building is still under a 20-year lease which commenced in 2001 for a lease rate of \$14.50 per square foot of building area. Petitioner purchased the building in November of 2013, 12 years into the 20 year lease, for \$4,100,000.

Petitioner's witness, Mr. Todd Stevens, presented the following indicators of value:

Market:	\$2,489,100
Income:	\$2,333,671
Cost:	N/A

Petitioner is requesting an actual value of \$2,400,000 for the subject property for tax year 2017. Respondent assigned a value of \$4,036,000 for the subject property for tax year 2017 but is recommending a reduction to \$4,000,000.

Mr. Stevens presented a sales comparison approach to derive a value of \$2,489,100 for the subject property.

Mr. Stevens presented 5 comparable sales ranging in sale price from \$1,958,700 to \$3,937,500 (111.01 to 167.18 per square foot of building area) and in size from 14,772 to 25,259 square feet on sites of .64 to 2.64 acres. After adjustments were made, the indicated values per square foot ranged from \$93.25 to \$106.08.

The locations of the sales were in the cities of Wheat Ridge, Arvada, Lakewood, Littleton, and Golden. Comparables 1 and 2 sold within the 18 month base period. The others sold in the extended base period but no time adjustment was applied. Adjustments were applied for location, age, economic characteristics, and physical characteristics. Mr. Stevens applied negative adjustments across the board for economic characteristics ranging from 10% to 25%. When asked what was the basis for the adjustments, Mr. Stevens testified that the basis was the difference in lease rates during the base period. Mr. Stevens also testified that he had not used the sale of the subject property in the extended base period because further confirmation of that sale revealed that it was not an arms-length transaction. He believes the purchaser (Petitioner) over paid for the property due to being up against a deadline to complete a 1031 exchange, and because he lives in California and was not familiar with the Denver market.

Mr. Stevens presented an income approach to derive a value of \$2,333,671 for the subject property.

The income approach contained one proforma based on full service basis, which is typical for a multi-tenant operation, and one based on a triple net (NNN), which is typical of a single tenant operation. He explained that the original tenant had downsized and subsequently sub-leased a portion of the building. This sublease was renewed during the base period (July 15, 2015) for \$16.50 per square foot. Mr. Stevens presented 8 rental comparables, 6 of which were in the current base period and 2 were in the extended base. The lease rates ranged from \$14.00 to \$17.50 per square foot and the leased areas ranged from 1,547 to 12,000 square feet. The total rentable area of the buildings ranged from 16,391 to 111,482 square feet. Mr. Stevens relied on the full service proforma to derive the value by the income approach.

Respondent presented the following indicators of value:

Market: \$4,200,000  
Cost: N/A  
Income: \$3,950,000

Respondent presented 5 comparable sales ranging in sale price from \$3,600,000 to \$4,100,000 (\$156.25 to \$206.04 per square foot of building area) and in size from 18,928 to 24,891 square feet. The site sizes ranged from 54,327 to 177,306 square feet. After adjustments were made, the sales ranged from \$163.84 to \$201.92 per square foot.

Respondent's witnesses, Mark Kane, and Richard Chase, prepared the appraisal. Mr. Kane is a Certified General Appraiser and Richard Chase is a MAI. Mr. Kane made the initial presentation of the appraisal. Comparable 1 was the November 2013 sale of the subject property for \$4,100,000. The other 4 sales were from the cities of Englewood, Golden, Centennial, Parker, and Highlands Ranch. They were all cash sales of 2 story office buildings of similar size and age to the subject. Two of the sales were subject to 20-year leases like the subject. Comparable 2 is the same sale as comparable 5 of Petitioner's appraisal. Four of the five sales closed in the extended base period, in 2013 and 2014, but no time adjustments were applied. Adjustments were applied for location, gross building area, land square footage, and condition. Although there were several errors in the grid, the reconciled value of \$165 per square foot of building area was supported. Both Mr. Kane and Mr. Chase testified that they found no data to disqualify the sale of the subject in 2013 as non-arms length. Sales involving 1031 exchanges are typically at market level and Petitioner was represented by a local commercial real estate agent who was familiar with the local market. The subject property was on the market for 169 days, but Respondent's appraisers did not consider that to be an excessive marketing time for commercial property, and the sold price was \$400,000 under list. In addition, there had been an appraisal in 2016 for a refinance with a mortgage amount of \$3,430,000. Assuming the typical loan to value for commercial property of 70%, the appraised value would have to be at least \$4,900,000, which appears to support \$4,100,000 as a market value 3 years earlier.

Respondent used the income approach to derive a value of \$3,950,000 for the subject property.

Respondent's appraisal included 5 leased properties but in testimony lease comparable 2 was withdrawn as it was included in error. The other 4 leased properties were all built in 2001 and were single tenant buildings like the subject. Lease 1 was the 20-year lease of the subject which began in 2001. Lease comparable #5 commenced 1/1/2016; the other leases commenced in the extended base period in 2013 or 2014. All were triple net terms and ranged from \$12.82 to \$17.00 per square foot. The building sizes ranged from 12,160 to 27,957 square feet. The concluded market rent rate for the subject on a triple net lease was \$14.50 per square foot, which is the rounded rent rate for the subject's 20-year lease. The appraisers included 2 proforma calculations, both for triple net, single tenancy operations, but one using a capitalization rate of 7.5% and one at 8.0%. They chose a value between the two indicated values at \$3,950,000.

Respondent assigned an actual value of \$4,036,000 to the subject property for tax year 2017 but is recommending a value of \$4,000,000.

The Assessor's Reference Library, Real Property Valuation Manual has procedures regarding appraising properties under long term leases for property taxation purposes. However, the special procedures require that at least 10 years be left on the lease on the assessment date. Otherwise, the typical appraisal procedures apply. In this case there was only 4 years left on the lease. Therefore, the property must be appraised as fee simple estate.

Petitioner's case was dependent on the sale of the subject property being a non-arms-length transaction and the subject building being appraised as a multi-tenant building. The Board did not find the argument convincing that Petitioner was under undue pressure for the 1031 exchange and not a knowledgeable buyer. There was representation by a local real estate agent whose guidance would take care of both situations. Mr. Stevens suggestion that the agent was acting only in his own best interest is unsupported. Although Petitioner documented more than one tenant on the assessment date, these were sub leases where the income would go to the base tenant, not to the landlord. The original lease was still in place, so technically it is still a single tenant building. The use of sub leases to support the rental rate and the subsequent use of a full service proforma is not appropriate.

Respondent's appraisal did use older sales in the Sales Comparison Approach but they were more comparable to the subject than those selected by Mr. Stevens. The triple net proformas performed by Mr. Kane and Mr. Chase were for triple net leases on single tenant buildings. The Board finds this appraisal more credible.

### **ORDER:**

Respondent is ordered to reduce the subject's 2017 value to \$4,000,000.

### **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).

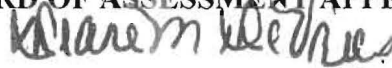
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

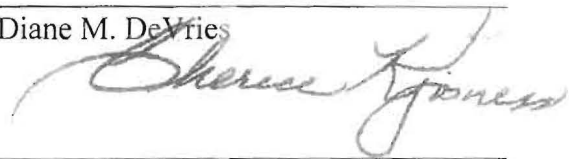
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 30th day of April, 2018.

**BOARD OF ASSESSMENT APPEALS**



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Diane M. DeVries



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Cherice Kjosness

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

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Milla Lishchuk

