BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **ARAPAHOE ST MALL LLC,** v. Respondent: **ARAPAHOE COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 70794**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 17, 2018, Debra A. Baumbach and Gregg Near 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.

The parties agreed to the admission of Petitioner's Exhibits 1 and 2 and Respondent's Exhibits A through E and the qualifications of the expert witnesses. The subject property is described as follows:

> **12023 & 12073 E Arapahoe Road**
> **Centennial, CO 80112**
> **Arapahoe County Parcel No. 2075-23-4-31-004 & 2075-23-4-31-003**

The subject property consists of two retail buildings; 12023 E Arapahoe Road containing 6,218 square feet and 12073 E Arapahoe Road containing 9,770 square feet. The buildings are located on sites containing 53,084 square feet and 66,113 square feet, respectively.

According to information provided by Respondent 12023 E Arapahoe Road has historically been demised for three tenants. 12073 E Arapahoe Road has historically been demised for four tenants.

Evidence Presented Before the Board

Petitioner presented the following indicators of value:

Market:	$4,608,970
Cost:	Not Applied
Income:	$4,754,277

Petitioner is requesting an actual value of $4,700,000 for the subject property for tax year 2017. Respondent assigned a value of $6,799,000 for the subject property for tax year 2017 but is recommending a reduction to $6,400,000.

Petitioner's witness, Todd Stevens of Stevens & Associates, presented a Market Approach containing seven comparable sales ranging in sale price from $1,596,495 to $5,391,000 and in size from 6,115 to 25,000 square feet. The sales were adjusted for location, age, economic characteristics, and physical characteristics. Total adjustments ranged from (-) 6% to (+) 8%. Sale No. 1 was adjusted upward for location and sales No 2, 4 and 5 were adjusted downward. Sales No. 3 and 5 were adjusted upward for age and all the remaining sales were adjusted downward. Sales No. 3-5 were adjusted upward for economic conditions and sales No. 2 and 7 were adjusted downward. Sale No. 2 was adjusted upward for physical characteristics.

After adjustments were made, the sales ranged from $182.68 to $298.10 per square foot. The witness concluded to a unit value of $290.00 per square foot applied to the gross building area. The indicated value by this approach was $4,608,970.

Petitioner presented an income approach to derive a value of $4,754,277 for the subject property. Information from ten lease transactions was analyzed to conclude to a rental rate of $24.00 per square foot on a triple net basis (NNN) to develop an estimate of Potential Gross Income of $381,432. The rental rate was based on an indicated range of $13.82 to $26.00 per square foot derived from comparable rental data. A deduction of 5% was taken for vacancy and credit loss to determine an Effective Gross Income (EGI) of $362,360. Additional adjustments of 8% were deducted for owner's operating, maintenance, and reserve expenses producing an estimate of Net Operating Income (NOI) of $332,799. The vacancy rate was based on CoStar data for second quarter 2016 for retail buildings in the southeast retail market. A capitalization rate of 7% was derived from the Summer 2016 Burbach & Associates, Inc. Real Estate Investment Survey. Application of the 7% capitalization rate to the NOI produced a value of $4,754,277.

Giving most weight to the Income Approach Mr. Stevens reconciled to a final value of $4,700,000.

Respondent presented the following indicators of value:

Market:	$6,800,000
Cost:	$6,050,000
Income:	$6,400,000

Respondent's witness Brian A. Cassidy, a Certified General Appraiser for the Arapahoe County Assessor's Office, relied on a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $6,050,000.

Mr. Cassidy presented six land sales ranging from $12.71 to $22.97 per square foot of land area. Qualitative adjustments were applied for location, size, functional utility and intended use. Sales 1, 2, 4, 5 and 6 were considered to have inferior locations and the witness estimated they should be adjusted slightly upward. Sales No. 1, 5 and 6 were considered to have slightly inferior sizes and were adjusted from slightly upward to upward. Sales No. 3 and 4 were deemed superior to the subject with respect to size and were adjusted slightly downward. Because of the subject's rectangular site Sales No. 1, 2, 3 and 6 were adjusted upward for functional utility. Finally the witness considered the commercial use intended by each of the buyers and adjusted for intended use. All of the sales with the exception of Sale No. 4 were planned to be developed with superior uses than the subject and were adjusted slightly downward. After adjustment the land sales ranged from slight downward to upward and were narrowed to a range of $16.25 to $22.97. Mr. Cassidy reconciled to a market value for the land of $2,400,000 (rounded).

Mr. Cassidy presented a replacement cost developed by use of the Marshall & Swift Cost Manual. Using the category of Stores and Commercials from the cost manual the witness concluded to a replacement cost of $3,106,187 for the building. Additions to the base cost were applied for site improvements, indirect costs and for the builder's profit and soft costs to determine a total cost new of $4,769,182. The cost new was adjusted by 20% for the building and 48% for the site improvements to recognize depreciation of $1,114,836. After subtraction of the depreciation from the estimated cost new the estimated value of the improvements was $3,654,346. The depreciated improvement cost was added to the previously developed land value to derive a value by the cost approach of $6,050,000 (rounded).

The witness presented a Sales Comparison Approach containing five comparable sales ranging in sale price from $2,500,000 to $7,440,000 and in size from 6,029 to 17,526 square feet. The sales were adjusted for location, size, age/condition, size and vacancy. Applying qualitative adjustments Sale No.1 was considered superior to the subject with regard to location and adjusted slightly downward. Sales No 3 and 4 were inferior in respect to location and were adjusted from slightly upward to upward. Sales No. 1 and 3 were determined to be better in age/condition and were adjusted slightly downward. Sales No. 4 and 5 were adjusted slightly upward and upward. Sales No. 1, 3 and 4 were smaller in size and were adjusted slightly downward. Sales No. 3 and 5 had significant vacancy and were adjusted upward. After adjustment the sales ranged from downward to significant upward and were narrowed to a range of slightly higher than $414.66 to less than $483.40 per square foot. Mr. Cassidy reconciled to a unit value of $425.00 per square foot and an indicated value of $6,800,000 (rounded).

Respondent presented an income approach to derive a value of $6,400,000 for the subject property. Information from five lease transactions was analyzed to conclude to a rental rate of $28.00 per square foot on a NNN basis to develop an estimate of PGI of $445,004. The rental rate was based on an indicated range of $24.00 to $31.00 per square foot derived from leases within the subject and outside comparable rental data. A deduction of 5% was taken for vacancy and credit loss to determine an EGI of $422,754. Management fees, owner expenses and reserves for replacement were deducted at 6% producing an estimate of NOI of $397,389. A capitalization rate of 6.25% was derived by analysis of alternative investments, information from the Summer 2016 Burbach & Associates, Inc. Real Estate Investment Survey and by analysis of eight capitalization rates of similar properties sold from December 2012 to June 2016. Application of the 6.25% capitalization rate to the NOI produced a value of $6,400,000.

Mr. Cassidy reconciled the three value estimates ultimately concluding to the indication determined via the income approach of $6,400,000.

<u>The Board's Findings</u>

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson,* 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner did not meet its burden.

The Board did not find compelling Petitioner's Limited Summary Consultation Assignment. The Board did not find the report to be compelling due to selection of comparable sales from widely separated market areas; too narrow a focus on comparable rents with overemphasis upon rents within the subject property without reasonable support from competing properties; reliance upon "experience" in the adjustment process without support in the market; significant real property assistance by unacknowledged individuals causing the Board to question the probative value of the evidence; absolute reliance upon third party research with no direct support from the market; and a general lack of objectivity.

The Board was swayed by the depth of analysis and evidence presented by Respondent finding the value conclusions to be well supported and reasonable.

The Board concludes that the 2017 actual value of the subject property should be reduced to $6,400,000.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to $6,400,000.

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 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 10th day of May, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Gregg Near

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

Milla Lishchuk

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS