

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SRE COLORADO-2 LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 70801</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 16, 2018, Gregg Near and Debra A. Baumbach 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 and B and the qualifications of the expert witnesses.

The subject property is described as follows:

**4300-4350 East Kentucky Avenue
Denver, CO 80246
Arapahoe County Schedule No. 1973-18-3-05-028 and No. 1973-18-3-05-029**

The subject property consists of two auto dealerships, one totaling 44,567 square feet and the other totaling 34,420 square feet. The property is also improved with an 89,872 square foot parking garage. The improvements are situated on a rectangular site containing 186,961 square feet, or, 4.29 acres. 4300 East Kentucky Avenue is a two story structure built in 1977 reportedly renovated in 2004. 4350 E Kentucky Avenue is a two story structure built in 1984 reportedly renovated in 2004. The buildings share an 89,872 square foot parking structure built in 2000.

Evidence Presented Before the Board

Petitioner presented the following indicators of value:

Market:	Not Applied
Cost:	\$5,875,408
Income:	Not Applied

Petitioner is requesting an actual value of \$5,875,000 for the subject property for tax year 2017. Respondent assigned a value of \$11,115,000 for the subject property for tax year 2017 but is recommending a reduction to \$10,000,000.

Petitioner's witness, Todd Stevens of Stevens & Associates, presented a consulting assignment containing a market adjusted cost value for the subject property of \$5,875,000. Mr. Stevens considered the Market Approach and the Income Approach to be unreliable.

The witness presented three land sales. The sales were adjusted for sale conditions, zoning (use), location and size. Total adjustments ranged from (-) 30% to (-) 45%. All sales were adjusted for sale conditions considered superior to the subject. Sales No. 2 and No. 3 had superior zoning and were adjusted downward. Sales No. 1 and No. 2 had inferior locations in comparison to the subject and were adjusted downward. All sales were smaller than the subject and received downward adjustments. The witness concluded to a land value of \$1,869,610 (\$10.00/SF) after adjustments.

Mr. Stevens presented a cost to reconstruct the improvements developed by use of the Marshall & Swift Calculator Cost Approach to determine a depreciated value of the individual components of the structure and site improvements of \$4,005,799. Addition of the land value opinion to the reconstructed cost determined a total value of \$5,875,408.

Respondent presented the following indicators of value:

Market:	\$10,270,000
Cost:	\$9,980,000
Income:	Not Applied

Respondent's witness Brady Sartin, a Certified General Appraiser from the Arapahoe County Assessor's Office, presented a Sales Comparison Approach containing three comparable sales ranging in sale price from \$4,360,000 to \$13,000,000 and in size from 22,746 to 48,864 square feet. The sales were adjusted for location, size (GBA), year of construction, land to building ratio and for the parking garage. Total adjustments ranged from (-) 30% to (-) 50%. All sales were adjusted downward for better locations, smaller size, superior land to building ratio and upward for lack of a parking structure. Sales No. 1 was adjusted downward for year of construction and Sale No. 2 was adjusted upward for the year of construction.

After adjustments were made, the sales ranged from \$118.19 to \$134.18 per square foot. The witness concluded to a unit value of \$130.00 per square foot applied to the gross building area

excluding the parking garage. The indicated value by this approach was \$10,268,310 rounded to \$10,270,000.

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$9,980,000.

Mr. Sartin presented four land sales. The sales were adjusted for location, size, topography, shape and zoning. Total adjustments ranged from (-) 12% to (-) 40%. All sales were adjusted downward for location. Sales No. 1, No. 2 and No. 4 were adjusted downward for smaller size and Sale No. 3 was adjusted upward for larger size. Sale No. 1 was adjusted upward for a sloping topography and Sale No. 3 was adjusted downward as it was level. Sales No. 2 and No. 4 were adjusted upward for irregular shape. Sale No. 3 was adjusted downward for residential zoning. After adjustment the land sales ranged from \$22.00 to \$29.68. After adopting a unit value of \$25.00 per square foot the witness concluded to a land value of \$4,675,000 (rounded).

Mr. Sartin presented a replacement cost developed by use of the Marshall & Swift Cost Manual along with information from local developers. The witness used the Calculator Cost Methodology and determined the subject was made up of approximately 35% showroom and 65% auto service. Considering the property to be average to good quality the witness determined a blended average cost of \$102.00 per square foot of building area and concluded to a unit value of \$100/SF. The parking structure was valued at \$15,000 per space based upon local developer input. Site improvements were added based on \$5.00/SF to produce an estimate of direct construction cost of \$14,613,700. After upward adjustments for indirect costs and developer profit the witness concluded a replacement cost new of \$17,682,577. Physical depreciation was calculated to be 60% of cost new and an additional adjustment of 10% was applied for an inefficient layout. The depreciated total cost of \$5,304,773 was added to the land value estimate resulting in a total value by the cost approach of \$9,979,773 rounded to \$9,980,000.

Respondent's witness Richard Chase, an MAI designated appraiser by the Appraisal Institute and a Certified General Appraiser from the Arapahoe County Assessor's Office, was requested to testify in rebuttal to Mr. Stevens' consultation report and testimony. The witness stated his familiarity with the subject neighborhood and questioned the land sales used in the report and a conclusion of \$10.00/SF for the land value. Mr. Chase also expanded upon Mr. Stevens' claim of extensive annual costs due to remediation of leaking underground storage tanks on the subject property. Additionally the witness questioned Mr. Stevens' portrayal of the improvements in his use of the Marshall and Swift Cost Manual as unduly negative by using inappropriate construction classifications. Mr. Chase also stated an opinion the County's cost approach was somewhat overstated and the adjustments for indirect costs and developer's profit could have been lower.

The Board's Findings

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 finds Petitioner's contention that valuation of component parts to be a superior use of the Marshall & Swift Cost Manual to have merit. The Board also finds agreement with Petitioner's description of the below average condition of the service garages but found it contrary to the information on the cost calculator (A-pg 29) where all of the components were described as average in building class and quality as well as average in condition. In addition, the Board agrees with Petitioner's claim that Respondent's building cost as well as estimates of indirect costs and developer profits was overstated.

The Board did not find compelling Petitioner's Limited Summary Consultation report. The Board does not place a lot of weight on the report due to the selection of the comparable sales; a discernable direction in value favoring the cause of the client; reliance upon "experience" in the adjustment process without support in the market; significant real property assistance by individuals that was not acknowledged in the report; unsubstantiated adjustments and a lack of objectivity.

Petitioner presented sufficient probative evidence and testimony to question the County's valuation of \$11,115,000 derived by the mass appraisal process. The Board also finds the site specific appraisal provided for this hearing sufficiently addresses Petitioner's arguments by concluding to a reduction in value to \$10,000,000.

The Board concludes that the 2017 actual value of the subject property should be reduced to \$10,000,000.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$10,000,000.

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 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 1st day of May, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Gregg Near

Gregg Near

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

Milla Lishchuk

Milla Lishchuk

