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| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>PMT PARTNERS XIV LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p> | <p><b>Docket No.: 71920</b></p> |
| <p><b><i>AMENDED ORDER</i></b></p>  |                                 |

**THIS MATTER** was heard by the Board of Assessment Appeals on December 4, 2018, Debra Baumbach and Samuel M. Forsyth presiding. Petitioner was represented by Thomas E. Downey Jr., Esq. Respondent was represented by Carmen Jackson-Brown, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner’s Exhibit 1 and Rebuttal Exhibits 1-5, Respondent’s Exhibits A, B, and C were admitted into evidence

Subject properties are described as follows:

| <u>Address</u>            | <u>County Schedule Number</u> |
|---------------------------|-------------------------------|
| 7437 Village Square Drive | R0422463                      |
| 361 Village Square Lane   | R0422457                      |
| 363 Village Square Drive  | R0422461                      |

| <u>Address</u>            | <u>Use</u>    | <u>Gross Area SF</u> | <u>Net Rentable</u> | <u>Year Built</u> |
|---------------------------|---------------|----------------------|---------------------|-------------------|
| 7437 Village Square Drive | Retail/Office | 15,812               | 12,363              | 2001              |
| 361 Village Square Lane   | Retail        | 13,650               | 13,618*             | 2001              |
| 363 Village Square Drive  | Retail        | <u>25,476</u>        | <u>24,759*</u>      | 2001              |
| Total                     |               | 54,938               | 50,740              |                   |

\*Respondent and Petitioner agree on the gross building area on all properties and net rentable area—the parties disagree on net rentable area for 7437 Village Square Drive by 91 square feet, 361 Village Square Lane by 65 square feet and for 363 Village Square Drive by 1,434 square feet. Net rentable area reflected is the average between the two values offered by the parties.

Petitioner is requesting actual value of \$6,500,000 for the subject properties for tax year 2017 broken out as follows (GBA is 54,938 square feet):

| <u>Address</u>            | <u>Req. Value</u> | <u>Req. Value per GBA sf</u> |
|---------------------------|-------------------|------------------------------|
| 7437 Village Square Drive | \$1,870,800       | \$118.32                     |
| 361 Village Square Lane   | \$1,615,000       | \$118.32                     |
| 363 Village Square Drive  | \$3,014,200       | \$118.32                     |
|                           | \$6,500,000       | \$118.32                     |

Respondent assigned a value of \$10,969,470 for the subject properties for tax year 2017. Respondent is recommending a reduction to \$10,600,000 on the basis of its expert appraisal, broken out as follows:

| <u>Address</u>                     | <u>Resp. Value</u> | <u>Resp. Value per GBA of 54,938 sf</u> |
|------------------------------------|--------------------|---|
| 7437 Village Square Drive          | \$2,800,000        | \$177.08                                |
| 361 and 363 Village Square Ln./Dr. | \$7,800,000        | \$199.36                                |
|                                    | \$10,600,000       | \$192.94                                |

Petitioner presented as the first witness, Mr. Charles Lowen, property manager for the subject property. Mr. Lowen testified about the many issues inherent in the subject property that made it difficult to manage and lease. The primary problems with this property are twofold. First, the development backs to Castle Pine Parkway, instead of facing this major thoroughfare. Second, the development is located west of I-25 and is an ‘island’ of commercial use in an area of relatively limited residential properties. Being isolated and so distant from the economic centers of activity to the south, north and east, Mr. Lowen stated that the subject property suffers from lack of interest by new prospective tenants, high turnover, and chronic vacancy issues. The development does not attract national credit tenants. Mr. Lowen testified that new tenants or tenants re-negotiating existing leases demand free rent and extensive tenant improvements. The witness also referred to several published studies undertaken by Castle Pines that define the underperforming aspect of the development and provide recommendations for redevelopment of the commercial development.

Petitioner’s next witness, David Berger, Real Estate Consultant, presented a Property Valuation Analysis. The appraiser stated that he was providing valuation services, or consulting matters, rather than an appraisal service. In the Certification Statement, the appraiser certified that his compensation for this work may be contingent upon the reduction in value that favors the cause of the client or the amount of the value estimated. The appraiser considered the cost, income and sales comparison approaches to value but concluded to a value only from the income and sales approaches to value.

The sales comparison approach reported 6 comparable sales. The sale prices ranged from \$1,850,000 to \$5,250,000. The gross building area of the comparables ranged from 18,019 to 61,437 square feet. The sales ranged from \$85.45 to \$239.36 per gross building square foot. Mr. Berger used qualitative adjustments to compare the comparable sales to the subject. He adjusted the comparable sales for market conditions, location, occupancy at time of sale, condition, and tenant quality. Comparable 6 sale price was adjusted for a roof structure problem that the buyer of this property discovered after the sale. The appraiser concluded that the subject value is greater than \$110 per square foot and less than \$130 per square foot. The appraiser concluded to \$120 per gross building area square feet or \$6,600,000.

Mr. Berger presented an income approach concluding to a value of \$6,400,000 for the subject property.

All but one of the leases of the subject property are triple net, the exception being Dukes restaurant which is a modified gross lease. Without providing rental comparables, the appraiser concluded to a rental rate of \$19 per square foot, a stabilized vacancy of 10% and an expense amount of \$2.00 per square foot (equating to a rate of 12% of effective gross income). Citing Division of Property Taxation guidelines, the appraiser concluded that it is appropriate to add an effective tax rate of 3.2% to the concluded capitalization rate because the appraiser did not include property tax reimbursement in the income and did not add the property tax expense to the expense amount. Referencing published capitalization rate surveys and the capitalization rates reported by CoStar for the sales used in the sales comparison approach the appraiser concluded to a capitalization rate of 8%. The overall rate of 11.20% was applied to the net operating income that does not include property taxes as an expense. The indicated value was concluded to \$6,745,790. The appraiser then provided a lease up analysis to account for the historically excessive vacancy of the subject, concluding to a total lease up cost of \$424,922.

Respondent's witness, Stephen M. Snyder Certified General Appraiser and Commercial Appraiser IV with the Douglas County Assessor's office, prepared two appraisals, one for the freestanding office/ retail building property located at 7437 Village Square Drive and another appraisal for the two freestanding retail properties located at 361 Village Square Lane and 363 Village Square Drive. Testimony by both parties during the hearing did not dispute that the three properties are arguably considered to be a single economic unit. Respondent stated in the appraisal for 7437 Village Square Dr. that despite this property having both retail and office use, "Due to the amount of common area square footage in the lobby area and the upper level office area, this appraisal will use the net square footage in the analysis of the subject as a retail building." For the income approach, Respondent used the same rental rate, vacancy rate, expense rate, and capitalization rates for each of the appraisals. For the sales comparison approach, the Respondent considered the same 4 comparable sales. The two appraisals by the Respondent of the three properties will be consolidated as a single economic unit for purposes of this finding similar to how the properties are consolidated by the Petitioner.

Respondent presented 4 comparable sales ranging in sale price from \$5,000,000 to \$7,050,000 and gross building area from 20,301 to 35,686 square feet. The range of sale price per square feet of gross building area is from \$197.56 to \$246.29. Respondent determined that several

units of comparison were conducive to quantitative adjustment though no quantitative adjustments were made. Respondent identified other units of comparison that were conducive to qualitative adjustments such as location, access/visibility, land to building ratio, and condition. After the qualitative adjustments, Respondent concluded that the subject should be valued greater than \$197.56 per square foot and less than \$240.21 per square foot. Comparable 2, at \$215.64 per square foot, had no quantitative or qualitative adjustments. Respondent concluded to \$215 per square foot or a composite value for all three properties of \$11,560,000. Respondent stated that the sales comparison approach was given some weight.

Mr. Snyder presented 4 rent comparables, all triple net leases, that ranged from 1,400 square feet to 4,084 square feet and ranged in rental rate from \$16.00 to \$23.00 per square foot. After applying qualitative adjustments for location and access/visibility, Respondent concluded to \$18.00 per square foot. Relying on the data presented in the *Douglas County 2<sup>nd</sup> Quarter 2016 Economic Development Report* provided in the body of the appraisal report and CoStar data, the Respondent concluded to a stabilized vacancy rate of 6% for the subject property. Respondent concluded to a total non-reimbursable expense rate of 5% of the effective gross income. Relying on the reported capitalization rates of the sales utilized in the sales comparison approach, the capitalization rate reported by CoStar for 23 sales from the prescribed data collection period and Investor Surveys Respondent concluded to an overall capitalization rate of 7.5%. Respondent concluded to a value for all three properties of \$10,610,000. Respondent then determined the cost to bring the subject properties to stabilized vacancy to be \$236,500 yielding a concluded value based on the income approach of both properties of \$10,373,500. Respondent stated that the income approach was given significant consideration.

Respondent assigned an actual value of \$10,370,000 to the subject properties for tax year 2017. The County Board of Equalization value for the properties is \$10,969,470.

#### Board 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 presented sufficient probative evidence to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board finds that the location of the subject property has unique aspects preventing it from reaching the stabilized income, vacancy and expense factors of competitive properties to the south, north and east of the subject. The subject lies in a relatively isolated location outside of the major areas of economic activity prevalent to the south, north and east. There is a relatively small amount of residential properties that are proximate to the subject. There is poor visibility off Castle Pines Parkway. The impact on value of these variables are clearly evidenced by the rent rates that are below stabilized market rents and the vacancy rates that are greater than those of competitive properties.

The Board does not find credible the sales comparison approach of either party. Both the Respondent and the Petitioner applied qualitative adjustments to the comparables. The Board recognizes that quantified adjustments are difficult to determine for sales in a market where so many variables exist between properties. When qualitative adjustments are necessary, it is helpful that full and complete information regarding the units of comparison adjusted for are supplied both for the subject and the comparable sales. The Board is not convinced that either the comparable sales selection or the adjustments made in the sales comparison approach of both parties provide credible conclusions.

Because of the unique nature of the location of the subject outside of the mainstream of economic activity resulting in economic obsolescence of the subject, the Board places significant weight on the income approach. The Board concludes that the Respondent's conclusion of \$18 per square foot is better supported. The Board also concludes that sufficient information is provided by both parties that the rents in the income approach are predominantly triple net. Given that the market determines that rents of properties such as the subject are triple net, the Board concludes that the Petitioner's addition of an effective tax rate added to the overall capitalization is inappropriate. The Respondent's vacancy rate and expense rate, on the other hand, are more appropriate for properties that exist within areas of more significant economic activities. The vacancy rate and expense determined by the Respondent rate are understated, even with consideration of the Respondent's excess vacancy analysis. The Board finds more credible the analysis and reasoning of the Respondent in the conclusion of the overall capitalization of 7.5%. Finally, in determining the fee simple value, after consideration of the stabilized rates and factors, it is inappropriate to engage in any cost of excess vacancy analysis.

With emphasis on the income approach, the Board concludes to the following stabilized factors: rental rate - \$18, NNN, per net rentable square foot; vacancy rate – 15%; expense rate – 18%; overall capitalization rate of 7.5% as follows:

| Net Rentable SF     | Rent \$/sf | PGI                 |
|---------------------|------------|---------------------|
| 50,740              | \$18.00    | \$913,320.00        |
| Vacancy Rate        |            | EGI                 |
| 15%                 | \$ 136,998 | \$776,322.00        |
| Expense Rate        |            | NOI                 |
| 18%                 | \$139,738  | \$636,584.04        |
| Capitalization Rate |            | Value (rounded)     |
| 7.50%               |            | <b>\$ 8,487,800</b> |

**ORDER:**

Respondent is ordered to reduce the 2017 actual value of the subject property to \$8,487,800.

The Douglas County Assessor is directed to change their record as follows:

| <u>County Schedule No.</u> | <u>Value</u> |
|----------------------------|--------------|
| R0422463                   | \$2,441,900  |
| <b>R0422457</b>            | \$2,108,100  |
| R0422461                   | \$3,937,800  |

**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 27th day of February, 2019.

**BOARD OF ASSESSMENT APPEALS**



*Debra A. Baumbach*

Debra Baumbach

*Samuel M. Forsyth*

Samuel M. Forsyth

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

*Milla Lishchuk*

Milla Lishchuk