

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 71935**

Petitioner:

**CELESTIAL TEA CORPORATION,**

v.

Respondent:

**BOULDER COUNTY BOARD OF EQUALIZATION.**

**ORDER**

THIS MATTER was heard by the Board of Assessment Appeals on September 6, 2018 Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Thomas E. Downey, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The parties agreed to the admission of Petitioner's Exhibits 1-2, Respondent's Exhibits A-C and E-G and the qualifications of the expert witnesses.

Subject property is described as follows:

**4600 Sleepytime Drive  
Boulder, Colorado 80301  
Boulder County Property ID No. R0109716**

The subject is located in the City of Boulder, east of the Diagonal Highway and is accessed by the privately owned and maintained Sleepytime Drive. The improvements are located on a 21.07 acre site and consist of a 158,257 square foot industrial and office building constructed in 1990. The building also contains a visitor center including a gift shop and café.

Evidence presented to the Board

Petitioner presented the following values:

Market: \$9,860,000

Cost: Not applied  
Income: \$10,690,000

Prior to the hearing, Petitioner was informed the building contained an additional 2,859 square feet that the County had failed to include with their original size estimate of 155,398 square feet. Petitioner's appraisal report was developed using the 155,398 square foot building size instead of 158,257. Petitioner initially reconciled to an actual value of \$10,000,000 for the subject prior to consideration of the added square feet. With the additional area, Petitioner is requesting an actual value of \$10,184,000 for tax year 2017.

Petitioner presented the testimony of Mr. Mark Schnepf, Operations Project Manager for Celestial Tea Corporation. Mr. Schnepf testified regarding the condition of the subject building and presented Exhibit 2. Exhibit 2 contained estimates from various contractors for asphalt repairs, carpet replacement, replacement of nine swamp coolers and renovation of the building interior. The witness testified to a total repair and renovation cost of \$1,906,650.80.

Petitioner's next witness Chris Baker, a Certified General Appraiser, presented a sales comparison analysis containing comparable sales ranging in sale price from \$7,150,000 to \$18,600,000 and in gross building area from 100,000 to 270,335 square feet. After adjustments were made, the sales ranged from \$61.29 to \$91.59 per square foot of rentable area. Mr. Baker concluded to a value opinion of \$11,654,850. To recognize deferred maintenance, the witness reduced this figure by \$1,799,594 to produce an as is value of \$9,860,000.

Mr. Baker presented an income capitalization approach to derive a value of \$10,690,000 for the subject property. The witness provided six comparable rentals of industrial buildings and six comparable rentals of office buildings. After adjustments were made to the comparables Mr. Baker concluded to a triple net (NNN) rent for the industrial portion of the building of \$5.50 per square foot and a NNN rent of \$12.00 per square foot for the office portion. Mr. Baker combined the income streams for both portions of the building, adjusted for vacancy, collection loss and building expenses and capitalized the Net Operating Income (NOI) to conclude a value opinion of \$12,492,054. To recognize deferred maintenance, the witness reduced this figure by \$1,799,594 to produce an as is value of \$10,690,000.

Based upon the indications derived from the Sales Comparison Analysis and the Income Capitalization Approach the witness reconciled to a fee simple market value of \$10,000,000. Giving consideration to the value of the additional building area initially omitted from the report, Petitioner is requesting an actual value of \$10,184,000 for tax year 2017.

Respondent presented the following assigned values:

Market: \$13,925,000  
Cost: Not applied  
Income: \$14,755,000

Respondent's witness Thomas M. Brennan, a licensed Ad Valorem Appraiser, presented a sales comparison approach containing six comparable sales ranging in sale price from \$6,950,000 to \$25,510,000 and in size from 100,204 to 200,315 square feet. After adjustments were made, the sales ranged from more than \$49.00 to less than \$147.00 per square foot of gross building area. Mr. Brennan concluded a unit value of \$88.00 per square foot and a value opinion of \$13,925,000.

Mr. Brennan used an income capitalization approach to derive a value of \$14,755,000 for the subject property. The witness provided four comparable rentals of industrial buildings obtained through the Assessor Rental Survey. The information is confidential and may only be presented in such a manner that the source cannot be identified. After adjustments were made to the comparables the witness concluded to a NNN rent of \$8.00 per square foot for the building. The income stream was adjusted for vacancy, collection loss and building expenses. The derived NOI was capitalized at 7.5% to conclude to a value opinion of \$14,755,000.

Based upon the indications derived from the Sales Comparison Analysis and the Income Capitalization Approach the witness reconciled to a fee simple market value of \$14,340,000. Mr. Brennan applied a deduction of \$583,686 for deferred maintenance to conclude an as is value of \$13,755,000.

#### 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 the following significant differences between the valuations presented by the parties:

1. Application of an adjustment for market conditions (time)
2. Analysis and adjustment, if necessary, for real property rights (leased fee or fee simple)
3. Characterization of the improvements
4. Adjustment for deferred maintenance
5. Adjustment for land to building ratios

The Board also finds there are numerous areas of agreement between the valuations:

1. The same four comparable sales were submitted by both parties. Vacancy rates ranged from 5% to 6%
2. Gross Potential Incomes ranged from \$1,162,614 to \$1,266,056
3. Expense percentages ranged from 5% to 8%
4. Capitalization rates ranged from 7.5% to 8%

The Board finds Respondent's conclusion of the market conditions adjustment to be more persuasive. The Board agrees with Petitioner's adjustments for leased fee to be appropriate but finds

there is insufficient support among the common sales for the amount of adjustments applied. The Board finds both parties to have failed to present convincing evidence and comparable sales supporting their characterization of the improvements. The Board is convinced Respondent correctly applied an adjustment for deferred maintenance and rejects Petitioner's adjustment for renovation to be appropriate. The Board finds Petitioner's lack of adjustment for land to building ratios to have been convincing.

Focusing on the four comparable sales deemed similar by both parties the Board has considered the above conclusions in relation to the sales comparison approach. (NOTE: In cases of discrepancy between the parties the Board has deferred to the information from CoStar):

<b>IMPROVED SALES ADJUSTMENT GRID</b>					
Address	Subject	4185 Salazar Way	13050 Smith Road	6303 Dry Creek Pkwy	6304 Spine Road
Sale Price		\$16,522,200	\$8,825,000	\$13,850,000	\$13,400,000
Time Trended		\$16,687,422	\$9,442,750	\$15,304,250	\$14,941,000
Office Percent	30%	8% (+)	12% (+)	10% (+)	60% (-)
Age	1990	2006 (-)	2005 (-)	1991	1965 (+)
Indicated Value		\$16,687,422	\$9,442,750	\$15,304,250 (+)	\$14,941,000
Deferred Mtc.		\$583,686	\$583,686	\$583,686	\$583,686
As Is Value		\$16,103,736	\$8,859,064	\$14,752,564 (+)	\$14,357,314

Respondent's value opinion is supported by the above.

Focusing on the party's income approach the Board has focused on the number of similar conclusions.

<b>ITEM</b>	<b>ADUSTED INDICATION</b>	<b>COMMENT</b>
Gross Potential Income	\$1,214,335	Average of both party's conclusions
Vacancy @ 5% and 6%	(\$66,788)	Average of both party's conclusions
Effective Gross Income	\$1,147,547	
Expenses @ 5% and 8%	(\$74,591)	Average of both party's expenses.--The subject has more office and partial retail finish justifying a larger expense ratio than 5%.
Net Operating Income	\$1,072,956	
Capitalization Rate	7.75%	Average of both party's conclusions
Indicated Value	\$13,844,599	

Respondent's value by the income approach is supported by the above.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

**ORDER:**

The petition is denied.

**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 6th day of November, 2018.

**BOARD OF ASSESSMENT APPEALS**

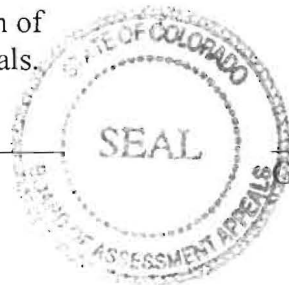
*Diane M. DeVries*

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Diane M. DeVries

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

*Milla Lishchuk*

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Milla Lishchuk



*Gregg Near*

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Gregg Near