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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SILAGI SIMMS, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 72095</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on August 31, 2018, MaryKay Kelley and Cherice Kjosness presiding. Petitioner was represented by Barry K. Arrington, Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Parties stipulated to the admission of Petitioner’s Exhibits 1 and 2 and Respondent’s Exhibits A and B. They also stipulated to the two appraisers being admitted as expert witnesses.

Subject property is described as follows:

**730 Simms Street, Golden, CO 80401
County Schedule No. 409773**

The subject property is a three-story plus garden level office building, built in 1977 on a 6.067-acre site just north of the intersection of Sixth Avenue and Simms Street. The gross building area is 181,412 square feet, and the net rentable area is 160,846 square feet per County records. For over two decades it was leased to a single tenant, the US Government. That tenant left in 2006 and the interior was “guttled” of all interior finishes except for the elevator, lobbies, and the restrooms. The property has remained in this condition and unleased since Petitioner purchased it on September 29, 2006.

Petitioner presented the following indicators of value:

Market: \$1,975,250 to \$3,245,222

Cost: N/A
Income: \$2,967,500

Petitioner is requesting an actual value of \$3,000,000 for the subject property for tax year 2017. Respondent assigned a value of \$4,380,811 for the subject property for tax year 2017.

Petitioner's witness, Mr. David Berger, Certified General Appraiser, Inactive, presented a market approach consisting of three comparable sales ranging in sale price from \$98.64 to \$112.01 per square foot. Mr. Berger testified that these sales were not vacant like the subject but indicated what a finished Class B office building in the vicinity of 6th and Union would sell for. He used the range of \$98.00 to \$105.00 per square foot applied to the subject's gross square footage to estimate a range of value for the subject "as if finished" of \$17,778,376 to \$19,048,260. Then, using rentable area, he deducted a "cost to cure" as follows: \$60.00 per square foot for interior office finish; \$13.75 per square foot as the cost to lease up the property; and \$24.50 per square foot for the rent loss over the period required to achieve market occupancy. He testified that all the costs came from the management company and the leasing agent that were currently managing the subject property. He correlated to a range of value by the Market Approach of \$1,975,256 to \$3,245,140.

Petitioner's witness did not present a cost approach.

Mr. Berger presented an income approach to derive a value of \$2,967,500 for the subject property. He used a potential gross rent of \$24.50 per square foot and allowed a stabilized vacancy of 10% and stabilized expenses of \$9.75 per square foot. These were figures obtained from the leasing agent. Using a capitalization rate of 10.54% he calculated a stabilized value of \$18,770,454. From that value he deducted a total lease up cost of \$15,803,120 for the indicated value of \$2,967,334 by the Income Approach.

The final correlated value of the two approaches was \$3,000,000.

Mr. Berger testified that the owners have had significant holding costs on this property and presented a profit and loss statement for January 2015 through June of 2016 showing a total loss of 1,266,355.17. The property has been continuously marketed for sale and lease with no contracts forthcoming. He believes this is the result of the location of the building which makes it difficult to access Sixth Avenue. Mr. Berger considers this significant incurable external obsolescence. In addition, there is a cross-easement for the parking area shared by 740 Simms Street which he considers an impediment to redevelopment of the subject property.

Under cross examination, Mr. Berger testified that he does not consider the method he used to adjust the sales for finish to be "double dipping," even though he used costs to put new finishes in the subject property and deducted them from sales prices for properties that were in average condition.

Respondent presented the following indicators of value:

Market: \$5,442,360

Cost: \$4,306,250
Income: N/A

Respondent's witness, Mr. Robert Sayer, Certified General Appraiser, presented a market approach consisting of five comparable sales ranging in sale price from \$1,400,000 to \$21,950,000 and in size from 44,904 to 377,769 square feet. After adjustments were made, the sales ranged from \$21.78 to \$46.07 per square foot.

The sales widely bracket the subject in size of gross building area, but were in different locations to the south and east of the subject. Comparable 3 was 100% vacant like the subject but was half the size. The other comparables occupancy ranged from 30% to 61%. Adjustments were made for a basement area for Comparable 1; an extra vacant lot included in Comparable 5; and for conditions exceeding average for Comparables 4 and 5. Mr. Sayer concluded a value of \$30.00 per square foot for a total value of \$5,442,360 rounded to \$5,400,000 for a final value by the Market Approach.

Under cross examination, Mr. Sayer testified that he didn't make any adjustments for occupancy, because properties that have 65% to 70% vacancy are not economically viable. In those cases, the occupancy is a detriment because the income is not exceeding the costs to keep renting the spaces. He testified that Comparable 2 was gutted right after the sale. As for the comparables with higher occupancies, these properties were in better condition. He made the condition adjustment but did not want to "double dip." He still considers these properties comparable as occupancy just above 50% still indicates a "serious economic condition." Mr. Sayer used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$4,306,250.

Mr. Sayer presented four sales to establish a land value of \$4,360,000 or \$16.50 per square foot. He testified that there were few sales of vacant parcels in Jefferson County. There were more sales of properties where the improvements were to be razed or repurposed. Comparable 1 is on 64th Avenue and the improvements were demolished and an organic grocery was built. Comparable 2 is on 58th Avenue and is a sale of a KMART site. The improvements were supposed to be demolished but the new owner received the remaining lease which KMART continues to pay. Comparable 3 is on Ralston Rd. and this property was repurposed into a Super Walmart. Comparable 4 is on Union Blvd., but it is a superior location. The strip mall was demolished and it is being developed into multi-family residential.

Mr. Sayer did not perform an Income Approach to Value as there was no income to the property on the assessment date.

Mr. Sayer does not consider the egress of the subject property to be a significant obsolescence. It is located just north of the Union Boulevard Commercial Area which is one of the highest rated retail areas in Jefferson County. Union Boulevard also has medians to handle the high traffic similar to Simms Street. Many of the properties have only one-way entries and exits and it does not materially affect the sales or leasing of those properties. He noted that Petitioner purchased the property for \$4,400,000 in 2006 and county records indicate there was approximately \$8,000,000 worth of updates done over the last few years.

The final correlated value of the two approaches was \$5,440,000.

Respondent argued that the credibility of Petitioner's witness was impacted because he was receiving a contingency fee. We find that Petitioner's contingent fee arrangement with its expert was clearly disclosed to the Board. As the trier of fact, we will weigh the evidence provided by the tax agent as we see fit in light of the disclosed bias shown by the contingent fee arrangement.

The Board did not find the appraisal performed by Mr. Berger to be credible. Insufficient data was presented to show external obsolescence in the egress, especially for an office building use. The method he used of adjusting the value from the Market Approach for the Cost to Cure the lack of interior finish is not credible because the comparables are not newly constructed or newly remodeled. To be accurate, the cost to cure figures would need to be adjusted for average condition. The Income Approach is highly speculative as well. With no interior finish, any projections of potential income are arbitrary.

A taxpayer's burden of proof in a BAA proceeding is well-established: a protesting taxpayer must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a *de novo* BAA proceeding. *Reiber v. Park Cnty. Bd. Of Equal.*, 14CA6 (Colo. App. 2014). After careful consideration of the evidence presented at the hearing, the Board finds that Petitioner failed to meet its burden.

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).

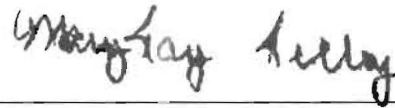
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

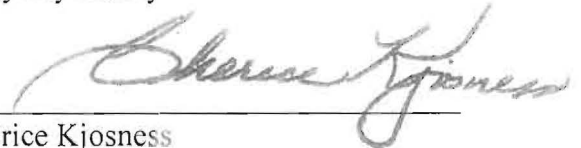
Section 39-8-108(2), C.R.S.

DATED and MAILED this 5th day of October, 2018.

BOARD OF ASSESSMENT APPEALS

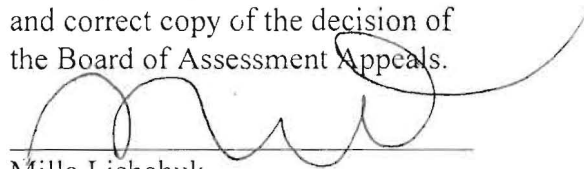


MaryKay Kelley



Cherice Kjosness

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



Milla Lishchuk