

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>AJOT LLC,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 72346</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 30, 2018, Debra A. Baumbach and Samuel M. Forsyth presiding. Petitioner, AJOT LLC was represented by Kendra Goldstein, Esq. Respondent was represented by Jason Sorensen, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The parties stipulated to the admittance of the expert witnesses, Respondent’s Exhibits A, B-1, B-2, and C and Petitioner’s Exhibits 1, 2, 3, 4, 5, 6, and 7. Respondent’s Exhibit D was not admitted subsequent to Petitioner’s objection.

Subject property is described as follows:

**7878 W. 80th Place, Arvada
Jefferson County Schedule No. 300085348**

The subject is a 3-level office building constructed in 1987. The Jefferson County describes the building as Class B. Construction is reinforced concrete frame with concrete and glass exterior. Exhibits entered into the record indicate an 8.4% average vacancy rate of the subject property for tax years 2014, 2015 and the first 6 months up to June 30, 2016. The lower level, below grade with dug out grade level windows providing point of window location natural light, has 5,256 gross square feet; the main level backs to grade and consists of 5,702 gross square feet; the upper level consists of 5,973 gross square feet. The parties agree that the total gross

rentable area is 16,931 square feet. The main level occupant is a bank with drive-up facility. This area has been more consistently upgraded and modernized over the length of the tenancy. The net rentable area of the entry level floor is 5,428 square feet. The second floor is accessed by stairs and a chair lift that runs along the stair rail. The use is office space. The net rentable area is 5,019 square feet. This area has not been as consistently upgraded or renewed as the first-floor space. The lower level access does not conform to American with Disabilities Act standards. The condition of the improvements, like that of the upper level, is average in quality and maintenance. The use is office. The access is non-ADA compliant stairs from the first-floor foyer area on the west side and a second set of non-ADA compliant stairs on the east side. The net rentable area of the lower level is 4,134 square feet. The total net rentable area is 14,581 square feet consisting of 4,134 square feet below grade and 10,447 square feet at or above grade. The parties agree on the amount of net rentable square feet. There are men's and women's bathrooms on each of the three levels.

The subject property was purchased by Petitioner for \$1,700,000. Date of sale per a recorded Warranty Deed was April 19, 2016.

Petitioner presented the following indicators of value:

Market:	\$1,049,100*
Cost:	n/a
Income:	\$1,249,600*

*concluded value includes deduction of \$119,000 for deferred maintenance

Petitioner is requesting an actual value of \$1,200,000 including \$119,000 for deferred maintenance for the subject property for tax year 2017. Respondent assigned a value of \$1,654,600 for the subject property for tax year 2017. Value developed by Respondent's expert in Appraisal Report admitted into evidence is \$1,775,000. Respondent requests that the assigned value of \$1,654,600 be sustained by this Board.

Petitioner presented Brenda Fearn, a property tax consultant, as its first witness. Ms. Fearn provided in evidence a Consulting Assignment report which stated "...Based on the information contained with the report, actual value for ad valorem taxation purposes as of June 30, 2016 is concluded to be...\$1,200,000." In the letter of engagement, the tax consultant stated that the report "...is not to be considered an appraisal..." and that "...the purpose of this report is to demonstrate that the actual value of the Property, as determined by the Jefferson County Assessor's office is overstated, and provide evidence to the State Board of Assessment Appeals warranting a reduction value based upon the evidence provided herein." Petitioner's report developed values based on the sales comparison (market) and income approaches to value. The cost approach was considered but a value was not developed or utilized.

Prior to testimony regarding the value of the subject, the property tax consultant identified two components of what she characterized as deferred maintenance: the roof which testimony indicated needed to be replaced and landscaping retaining wall that needed repair and that in some

areas had collapsed. Bids by local contractors determined the cost to replace these two items to be \$119,000.

Ms. Fearn provided insights as to the base year purchase of the subject property that is under appeal. She acknowledged that the property sold for \$1,700,000. She testified that the sale price did not represent an arm's length transaction nor the true and reliable market value based largely on her interview with a principal of the LLC. The purchaser stated that he had limited prior experience in the purchase of commercial property. He stated that the purchase was made to take advantage of the favorable tax considerations associated with a 1031 exchange. Because there are constraints of time and nature of qualifying properties, the purchaser felt pressure to engage in the transaction. He also felt pressure to close on the transaction despite discovering adverse information about the property during escrow. Ms. Fearn testified that she believes the buyer paid in excess of market value due to the buyer's lack of experience and knowledge of the market and because of the pressure of timing inherent in the 1031 exchange requirements.

Petitioner presented 4 comparable sales of income-producing office properties proximate to the subject ranging in sale price from \$580,000 to \$1,950,000 and in size of gross rentable area from 8,196 square feet to 17,720 square feet. Before making qualitative adjustments for the identified units of comparison of the comparables relative to the subject, the consultant reported a quantitative value of the lower level of the subject at \$30,000 and applied a square foot adjustment based on that value to the comparable sales. After making this adjustment, which was upward for comparable sales 1, 2 and 4 which had no lower level, and downward for comparable 3 which had a larger lower area, the resulting sale price before further adjustments, ranged from \$81.47 per square foot gross rentable area to \$108.65. The consultant's report then identified the following units of comparison: occupancy relative to market, land building ratio, parking, location, visibility exposure, access, improvement size and condition. After summing the adjustments, comparable sale 1 at \$81.47 per square foot before adjustments was determined to be inferior at one plus (+) and was adjusted upward 10% to \$89.62 per square foot. Comparable sale 2 at \$100.94 per square foot before adjustment was concluded to be inferior by one plus (+) adjustment and was adjusted upward 5% to \$105.98. Comparable sale 3, at \$108.65 per square foot was determined after adjustments to be superior to the subject by two minus (--) adjustment and was adjusted downward -10% to \$97.79 per square foot. Comparable sale 4 at \$99.30 per square foot before adjustments was concluded to be similar to the subject resulting in no adjustment. Adjusted values per square foot of gross rentable area, prior to lump sum adjustment of \$119,000 for each comparable for deferred maintenance, were reconciled at \$100 per square foot or \$1,168,000. After a lump sum adjustment accounting for deferred maintenance of \$119,000, the conclusion of value based on the sales comparison (market) approach is \$1,049,100. Respondent's Consultant placed 30% weight on the value indicated by the market approach.

Petitioner presented an income approach to derive a value of \$1,249,600 (prior to deduction for cost of deferred maintenance) for the subject property. The Consultant Report developed a conclusion of value by capitalizing a single year's income stream. The consultant first developed market-based rents for the various uses and floors of the subject utilizing a survey of market participants and base period leases in addition to well established market survey publications. Actual rents collected for the subject during the statutory data collection period were considered. For the lower level area, the concluded rent was \$10.50 gross per net rentable square foot and for

the upper level (2nd story, not including bank area on the first floor) \$14.00 gross per net rentable square foot. The bank area tenant entered into a lease with a modified gross lease rate on August 8, 2002 with an original expiration date of the initial term of August 8, 2012. Parties agreed that the tenant would have 4 options of 5-year terms each at the end of the original term. In May 2007, the bank exercised its first option taking effect August 8, 2012. At that time, the lease was also modified from having a component of a property tax pass-through to having the tenant pay only its prorata share of the building's utility costs. The modified gross rent as of the appraisal date of June 30, 2016 for the bank occupied area was \$22.05 per square foot. Referencing City and County of Denver v. BAA and Regis Jesuit Holding, Inc., 848 P.2d. 355 (Colo.1993), the Petitioner stated that because the lease was a long-term lease with over 10 years remaining (including options which it was proven have historically and consistently been exercised), the actual lease rate, whether above or below market, must be considered. Based on market surveys, a stabilized vacancy rate of 10% was utilized. Based on market surveys and the actual cap rates derived from 4 sales that transacted between July 2014 and November 2015, an 8% overall capitalization rate was applied. Because all of the leases are gross leases and none have a provision for property tax pass-through, the consultant added an effective tax rate of 2.76% to the concluded overall rate which resulted in rate of capitalization of 10.76%. This rate, applied to a net operating income which included 10% vacancy and 30% expenses, yielded a value based on the Income Capitalization Approach of \$1,368,600. 70% weight is placed on the income approach. After a lump sum adjustment for deferred maintenance, the income approach value conclusion is \$1,249,600.

Under cross examination, Ms. Fearn was asked if she were an advocate for the seller. She answered that she was endeavoring to provide evidence of the market value for the subject. She was asked to restate why the sale of the subject property was an outlier and not determinative of its market value for ad valorem purposes. She stated that she had interviewed the owner and the listing agent and believed that based on the circumstances, the sale price did not reflect market value nor an arm's length transaction. She testified that she did not ask the listing agent if there were an appraisal associated with the transaction. She also stated that she was not aware nor did she believe that there were "multiple offers" on the subject. She testified that she interviewed various parties to the transaction and that none had stated there were any offers other than that by AJOT, LLC.

Petitioner then presented Oliver Ellison, manager of AJOT, LLC as owner of the subject who was principally involved with the purchase of the property under appeal. Mr. Ellison testified that the LLC was a "family" entity with members being related. The family had inherited a warehouse from Mr. Ellison's father. Subsequent to the sale of the warehouse, the LLC engaged with a 1031 exchange consulting service, ERG, and a real estate broker. Based on the 1031 exchange guidelines, the LLC was advised that certain qualifying properties needed to be identified and a qualifying transaction must close within a stated timeline. The 1031 exchange was managed and monitored by ERG. The transaction was financed with a bank. An appraisal, ordered by the bank, was done on the subject property. Mr. Ellison was not aware if the appraisal identified any problems with the value. During escrow and prior to closing, Mr. Ellison testified that representations made regarding the property were not accurate. Most notably, it was discovered that the bank tenant was not responsible for payment of 100% of the utilities but only the bank's pro-rata share based on the percentage of its occupancy. Mr. Ellison testified that upon discovery what he characterized as substantive mis-representations by the seller, he exercised his

right to ask the seller to consider adjusting the agreed sale price downward. This request being refused, Mr. Ellison testified that having been made aware of the mis-representations and believing that the property was not worth what the LLC had agreed to pay, and despite the fact that the LLC could cancel the transaction, the LLC proceeded to close the transaction because of the LLC's lack of sophistication and potential tax penalties if the conclusion of a qualifying 1031 exchange did not proceed in a timely manner.

Mr. Ellison proceeded to state that subsequent to the closing it was discovered that the roof, reportedly installed in 2002, needed to be repaired and then discovered it needed to be replaced. The bid to repair the roof was dated May 20, 2017. A subsequent bid to replace the roof was dated May 19, 2018. Subsequent to the closing, Mr. Oliver secured a bid of \$19,292, dated November 2016, to replace approximately 804 square feet of retaining wall. A portion of the retaining wall eventually collapsed sometime between October 3, 2018 and October 15, 2018.

During cross examination, Mr. Ellison stated that he was aware of an appraisal by the bank necessary to close the transaction but did not know any details about the appraisal. Mr. Ellison stated that an inspection of the property was a condition of the contract and was allowed during the escrow period. Mr. Ellison was provided with newspaper articles that stated that a property damaging hail storm, characterized as the most damaging in Colorado history, had hit the area in which the subject building lies on May 8, 2017. Mr. Ellison testified that he had a vague memory of the storm but had not talked to the tenants regarding any impact of the storm nor had he inspected the building soon after the storm. Regarding the purchase, Mr. Ellison testified that he was assisted in his search for a property and the execution of the sale documents by professional real estate agents. He testified that he believed that the property was listed and available on the open market.

Respondent presented the following indicators of value:

Market:	\$1,695,000
Cost:	n/a
Income:	\$1,850,000

Respondent presented Robert Sayer, Certified General Appraiser, who provided in evidence an Appraisal Report concluding to a retrospective value of \$1,775,000 as of June 30, 2016. Mr. Sayer is employed by the Jefferson County Assessor's office. On the Certification page of the appraisal report, Mr. Sayer certified that he and the cosigner of the report, Michael Early, "...have no present or prospective interest in the property...", that neither has any "...bias with respect to the property...", that "...engagement in this assignment was not contingent upon developing or reporting predetermined results...", and that "...the compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal..."

In the sales comparison (market) approach, Respondent presented 5 comparable sales. Sale prices before adjustments ranged from \$1,011,000 to \$3,260,000 and in size of gross rentable area from 10,440 square feet to 17,906 square feet. Respondent applied qualitative adjustments to the

comparable sales. Identified units of comparison that were adjusted were land to building ratio, location, building size – gross building area, year built, vacancy, use, condition, quality and bank drive up. Comparable sale 1, located in Arvada, had an unadjusted sale price per square foot of \$90.15. After summing the adjustments, it was determined to be inferior with 2 plus (++) adjustments. Comparable 2, located in Parker, was determined to be superior with 4 minus (----) adjustment. The gross building area per square foot before adjustment was \$182.06. Comparable 3, located in Arvada, with a sale price per gross building area of \$90.82, was determined to be inferior and received 3 plus (+++) adjustment. Comparable 4, located in Westminster, with a \$141.28 sale price per gross rentable area, was determined to be overall superior and received a 1 minus (-) adjustment. Comparable 5, located in Highlands Ranch, was determined to be overall superior with a 1 minus (-) adjustment. The appraiser reconciled to a value of \$100 per square foot of gross living area concluding to a value based on the sales comparison approach of \$1,693,100. Respondent placed equal weight on both the sales comparison and income approaches to value.

Respondent developed an indication of value based on the income capitalization approach. The value was established by the Respondent by first determining rental rate from the market, then vacancy from market data, then determining expense rate and finally determining the overall capitalization rate. Key factor to the Respondent's development of rental rates was that the Respondent believed that the lower level rental space was equal to the rental rate of the upper level space. Respondent also placed significant weight on the nature and character and terms of lease of the main floor occupied by a bank with a drive-up capability. Regarding the bank space, the Respondent identified 5 bank leases which the Respondent testified were properties "...leased in or immediately prior to the applicable base study period..." After adjustments based on units of comparison including net rentable area, rent basis (i.e. gross, modified gross, or net), location, drive up, and use (i.e. free standing or not), the range of rent per square foot of the bank space was determined to be between \$25.00 per square foot and \$32.77 per square foot. Rent was reconciled to be \$30.00 per square foot modified gross. Regarding the rent for the general office space for the below grade space (with at grade windows providing some natural light) and the upper level space tightly arrayed between \$14.74 and \$15.50 per square foot. A fee simple rental rate was established at \$16.00 per square foot, full service gross, "taking into account improving market conditions at the time of the appraisal." In addition to the revenue attributable to the rent, the Respondent also added recoverable income of the utilities that the lease requires be borne by the bank tenant based on the pro-rata share of the bank space. Regarding vacancy rate, the Respondent notes that the vacancy as of the appraisal date was 5%. Relying on the actual vacancy and using established vacancy survey reports, the appraiser settled on a stabilized vacancy of 9%. The Respondent applied a 37.5% expense rate, including reserve for replacements but not including property taxes. As to the overall capitalization rate, the appraiser relied on the reported capitalization rates derived from 26 sales in Jefferson County. Appraiser stated that the source of these capitalization rates was CoStar. With consideration of the credit worthiness of the bank space and the long-term nature of the lease, Respondent concluded to a capitalized value based on the income approach to be \$1,850,000 (rounded). Equal weight was given to the income approach and sales comparison approach to value.

During cross examination, appraiser conceded that the rentable area attributable to bank use of bank rent comparable 1, 101 W. Mineral Way, was vastly overstated. The appraiser for the

Respondent noted that for bank rent comparable 2, the stated rent was \$30.75 per square foot but that the record indicates that the lease was negotiated in 2008, 3 years prior to the maximum allowed 5 year data collection period. Petitioner objected to the consideration of this lease information because it was originated outside of the 5 year data collection window. The Board gave very little weight or consideration to this market data point. During Board questioning, the Petitioner's expert had no credible explanation as to why the lower space, without any form of ADA access and being largely below grade, would reasonably have the same rental rate as the upper level square footage.

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

The first issue to be resolved is whether the sale price of the subject during the data collection period was an arm's length transaction and evidence of the market value of the subject. The Board heard sufficient testimony about the nature of the sale and was provided sufficient documentation that the sale satisfied the commonly understood components of arm's length transaction and market value. The definition of market value (market value) and associated criteria (USPAP definition) is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

The evidence indicates that the purchaser of the subject property was represented by a real estate broker and a 1031 Qualified Intermediary. Evidence indicated that along with the purchaser, an independent bank was also a party in determining the quality of the sales price and condition of the property by virtue of an appraisal that was executed for the benefit of the bank. Further, the purchaser was afforded the opportunity to void the real estate contract having been informed of what was termed as substantive mis-representations but declined to do so. The Board concludes that the factors determining arm's length transaction and market value were met and that the sale was timely and qualified.

The second issue regards the discovery and impact of value of what was characterized to be deferred maintenance of landscaping retaining wall and the roof. In the case of the wall, it was

likely that a prudent purchaser exercising due diligence, would have known about the condition of the wall during escrow and at the time of the closing. A bid was not secured until after the closing but before the assessment date. The collapse of part of the wall did not occur until well into 2018, almost 20 months after the assessment date. It is the Board's position that the state and condition of the wall is not deferred maintenance but typical for a building constructed in 1987. Regarding the roof, documentation in the exhibits indicated that the roof was replaced in 2002 – the actual life as of the appraisal date of 1/1/2017 was 15 years. Testimony by the experts suggested that the estimate of a standard life of a roof like the subject is 20 to 30 years. The first bid to repair the roof was in May, 2017 after the assessment date and over a year after the purchase of the property. The bid to repair the roof was accessed in 2018, well after the assessment date of 1/1/2017. The Respondent provided evidence of a massive and historically destructive hail storm on May 8, 2017 that carved a path over an area where the subject property lies and damaged or destroyed property in the path of the storm. The Board again relies on evidence that the condition of the property was not an issue during the escrow and no evidence was provided that the roof was in any worse condition as of the assessment date than a 17-year old roof would likely be on a 29 year old building. The Board concludes that no lump sum adjustment is appropriate for either the landscape walls nor the roof.

The Board does not find credible the sales comparison approaches of either the Petitioner or the Respondent. The subject property is unique enough in its design, architecture, use, layout and tenant mix that trying to equalize disparate comparables does not provided credible results. The Board recognizes the difficulty in determining adjustments but is not swayed that the use of quantitative adjustments provides a reliable indication of value. The Petitioner conflated a quantified value analysis of the value of the lower level area with the quantified adjustments to the comparable sales. The Respondent's comparable sales were in some cases too far from the subject and other cases not similar enough to the subject, as indicated by the resulting broad range of values per square foot of \$90.15 to \$186.29, reconciling to \$100.00 per square foot which is 11% greater than the low range and 53% lower than the high range.

The Board is convinced that the sale price of the subject is the most solid indicator of value and that the income approach is the most salient approach to value given the nature of the subject and the typical motivation of a purchaser in determining the value of the subject. Based on data provided in the exhibits, following is the Board's capsulation of values of the property based on the actuals of the property at time of sale (leased fee) and application of the Board's opinion of stabilized factors (fee simple approach).

Actual (Leased Fee)			
PGI	\$ 15.50	14,851	\$ 226,006
Reimbursable			\$ 8,500
Rev. PGI			\$ 234,506
Avg exp.			43%
NOI			\$ 100,837
Sale Price			\$ 1,700,000

Derived Cap Rate			5.93%
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Stabilized (Fee Simple) based on Board analysis			
PGI	net rentable	rate	
upper level	5,019	\$ 16.00	\$80,304
main level (bank)	5,428	\$ 24.00	\$130,272
lower level	4,134	\$ 10.50	\$4,145
Total Rent	14,581		\$214,721
Reimbursable			\$9,000
			\$223,721
Vacancy		10%	\$22,372
EGI			\$201,348
Expense		30%	\$60,405
EGI			\$163,316
Cap rate 7.00% plus ETR 2.76%			9.76%
			\$1,673,319

The main floor tenant bank is determined to be a credit tenant with a long-term lease. The Board determines that the lease rate, fixed (with defined escalators) over a long term with likely exercising of option, is below market rate. The Board concludes that the market rate of the bank space on the main level is \$26.50 per square foot. Based on these criteria, the Board determines that this aspect of the tenant mix deserves weighted treatment in the valuation of this property. The Regis Jesuit case requires that the contract rate be taken into consideration along with the market rate for long term leases. The Division of Property Taxation has established guidelines on how to handle long term below market rents and how to determine the capitalization rate of the income and expenses of the credit tenant space. Regarding the bank space rental rate, the Board determines that a fair rate for valuation purposes is \$24.00 per square foot. The established capitalization rate takes into account the capitalization rate based on the sale of the subject property using actual income and expenses, rates indicated in the experts' reports, and the following guidelines from the Assessor's Reference Library, Volume 3, chapter 7, pages 7.11 to 7.14:

- “Frequently, large national tenants are able to negotiate below market rental rates. Because of the good creditworthiness of this type of tenant, **these properties may sell at a lower overall rate...**” (emphasis added).
- “The general concept is that lower risk positions should be capitalized in value at lower overall rates.”
- “The leased fee interest is a lower risk position, therefore, a lower rate is appropriate.”

Taking into account the value of the arm’s length sale of the subject property during the statutory data collection period and the value established by the Board’s analysis, it is the Board’s determination that the Jefferson County CBOE value of \$1,654,000 is appropriate.

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 7th day of December, 2018.

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

