

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>G &amp; E HC REIT II ST. ANTHONY NORTH DENVER MOB, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ADAMS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 72549</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 14, 2018, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Exhibits admitted for the hearing included Petitioner’s Exhibits 1 and 2, and Respondent’s Exhibits A and B, noting Petitioner’s objections to Respondent’s Exhibit A.

Subject property is described as follows:

**8510 Bryant Street, Westminster, CO  
Adams County Schedule No. R0176588**

The subject property is a 3-story, 60,372 rentable square foot multi-tenant medical office building. It was constructed in 2008 next to the former St. Anthony North Hospital facility, on a site with a long-term ground lease from Catholic Health Initiatives Colorado D/B/A St. Anthony North Hospital. This appeal relates to the improvements only.

Petitioner is requesting an actual value of \$8,137,000 for the subject property for tax year 2017. Respondent assigned a value of \$12,335,625 for the subject property for tax year 2017.

Petitioner contends Respondent did not consider the negative impact on value for the subject property when the St. Anthony North Hospital moved to a new facility approximately six miles from this location in February 2015, early in the assessment 18-month base period. Also, respondent relied on sales of more specialized medical buildings than the subject property which are not comparable to the subject.

Further, Petitioner objected to the admission and consideration of Respondent's Exhibit A, the appraisal report presented for the hearing, and to any testimony by Respondent's witness regarding the appraisal on the grounds that Respondent must support and defend the value assigned by the CBOE. Respondent's appraisal report concludes to a higher value than assigned by the CBOE and the Board cannot increase an assigned value. Therefore, the value presented in Respondent's appraisal is not relevant and is prejudicial to Petitioner's case. In support of the objection, Petitioner cited Section 39-8-108(5)(a) C.R.S., and the Colorado Rules of Evidence 401, 402, and 403. Respondent countered that Respondent's Exhibit A does conclude to a higher value, but Respondent is not asking for an increase in value. The appraisal is a property specific analysis to support the CBOE value and the Colorado Rules of Evidence do not apply to this Board.

Appeals to district court and the BAA are "de novo" hearings; in other words, the taxpayer and the county may present new evidence. *Arapahoe Cnty. Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997). With the exception of the cap placed by the BOE on subsequent valuation, the de novo proceeding before the BAA is commonly understood as a new trial of an entire controversy. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Evidence submitted originally to the county board can be supplemented, Section 39-8-107(1), and 108(1), C.R.S. ARL Vol. 2, page 5.6.

Trial de novo under this section does not mean review but means an entirely independent determination of the facts. *Arapahoe P'ship v. Bd. of County Comm'rs*, 813 P.2d 766 (Colo. App. 1990).

Regarding Petitioner's objection to the admission of Respondent's Exhibit A (the appraisal) and to hearing testimony from Respondent's witness about the appraisal, the Board finds Petitioner's claim the BAA cannot increase an assigned value is not in dispute. The Board finds no statutory requirement that the BAA exclude all hearing evidence put forth by Respondent to support a claim of a higher conclusion of value than that assigned by the CBOE. The Board weighs the credibility of all evidence presented to the BAA by both parties. The fact that an appraised value submitted by Respondent to the BAA is above the assigned value does not preclude some of the facts presented from being relevant. The Board concludes Petitioner's case is not unfairly prejudiced by evidence presented showing a new value that is higher than the assigned value. Similarly, Respondent's case is not prejudiced by the Board's consideration of a Petitioner's evidence and conclusion of a value that Respondent might consider unreasonably low. The Board overrules Petitioner's objection and concludes that the admission of Respondent's Exhibit A and associated testimony is proper.

Petitioner presented the following indicators of value:

Income:	\$8,137,000
Market:	\$7,848,360

Petitioner presented Mr. Matthew Poling as witness. Mr. Poling is a licensed CPA and Principal with Ryan, LLC, a tax service company. The witness presented a valuation analysis report submitted by Ryan, LLC. Although the report was unsigned and not attributed to an individual author, Mr. Poling testified he prepared the analysis. Mr. Poling testified Ryan, LLC is paid on a contingent fee basis, but he personally is paid a salary. The witness testified he considered all three approaches to value but did not develop the cost approach.

The witness testified that after St. Anthony North vacated the hospital next to the subject building in early 2015, the former hospital facility was renamed as the 84th Avenue Neighborhood Health Center. It provides emergency care and outpatient services only, which is a major change from when it was a full-service hospital. Occupancy at the subject property declined from 90.5% in January 2015 at the beginning of the base period to 40.9% on January 1, 2017, the assessment date. Following the hospital move, some tenants paid lease termination fees to relocate to space close to the new St. Anthony North facility. As support for this claim, the 2016 operating statement for the subject shows a large amount in lease termination fee revenue. The ground lease imposes faith-based and other restrictions on the types of tenants and uses that are permitted to occupy space in the building and although Petitioner tried to seek relief from those restrictions after the hospital move, it has been denied.

The witness presented an income approach to value using a pro forma income estimate with an estimated market rent based on asking rents for other nearby medical office space. The witness applied a 25% vacancy rate to reflect the difficulty in leasing vacant space in the building following the St. Anthony North move early in the base period. The witness based non-recoverable operating expenses on a flat percentage of effective gross income, a figure derived from his own experience. After concluding to an initial indication of value, the witness deducted the present value of the rent loss, tenant improvement costs, and leasing commissions for the difference in the 25% stabilized vacancy used in his pro forma and the higher actual 59.1% vacancy on January 1, 2017. To account for the ground lease, the witness also deducted a value for the land described as the value assigned by the county assessor. The witness concluded to an adjusted value for the subject using the income approach of \$8,137,000.

Petitioner's witness presented five comparable sales ranging in price from \$73.23 to \$166.67 per square foot and in size from 12,480 to 47,509 square feet. The witness made qualitative rather than quantitative adjustments to the sales, so did not conclude to adjusted prices for each sale. Based on his analysis, the witness concluded to a value of \$130.00 per square foot for the subject property and a total value of \$7,848,360.

Petitioner's witness testified he used the market approach to value only as a test of reasonableness and did not give it any weight in his final conclusion of market value for the subject property of \$8,137,000.

The Board finds Petitioner's use of a lower market rent for the property is reasonable after the relocation of the St. Anthony North hospital. Petitioner's evidence of the 59.1% vacancy at the property as of the assessment date of January 1, 2017 is after the data collection period and cannot be considered for this appeal. The Board finds that Petitioner improperly relied on the post base period vacancy rate in selecting the 25% vacancy and collection loss rate used in Petitioner's stabilized pro forma income analysis. That conclusion also improperly inflates the deduction made for rent loss and leasing costs for the estimated time to achieve stabilized vacancy as of June 30, 2016. The Board does not find Petitioner's pro forma operating expense estimate consistent with the actual operation of the property and it does not appear to have considered the actual operating expense history during the 18-month base period provided. Further, Petitioner's analysis does not account for the loss of recoverable expenses due to the high vacancy on the appraisal date. The Board finds the capitalization rate used by Petitioner's witness is above the range of rates he presented from professional surveys, based on an extrapolation adjustment he applied to multiple survey sources in an attempt to derive a rate for a property not considered a first tier investment. The Board finds the survey sources adjusted by the witness do not indicate their reported capitalization rates are for first tier quality investments only. Therefore, the Board concludes the adjusted capitalization rate selected by the witness is not supported by the evidence. Rather than include the ground lease expense in the pro forma, Petitioner addressed the ground lease issue by deducting the assessor's assigned value for the leased land from the initial indication of value. The Board finds that method assumes the assigned land value is supported, which is a fact not in evidence. Further, the value of the improvements depends on the ground lease. The actual land lease expense is readily available in Petitioner's Exhibit 1 and is what a potential buyer would consider when analyzing the net income potential for the property.

Respondent presented the following indicators of value:

Market:	\$14,770,500
Cost:	\$14,583,000
Income:	\$12,776,000

Respondent presented Mr. Edward Hermann as witness. Mr. Hermann is a Certified General Appraiser in the State of Colorado and is employed by the Adams County Assessor's office. The witness testified he developed all three approaches to value.

Respondent's witness presented 6 comparable sales; Sale 5 was excluded from consideration because it occurred prior to the five-year extended data collection period. The remaining sales ranged in price from \$198.78 to \$441.99 per building square foot and in size from 19,026 to 117,649 square feet. After adjustments, the sales ranged from \$188.30 to \$435.07. The witness concluded to a value for the subject property of \$229 per square foot. Applying that amount to the gross square footage of the building, the witness concluded to a total value of \$14,770,500.

The witness testified he did not try to adjust the sales that have surgical centers in comparison to the subject, which does not have that use. The witness inspected common areas in the subject property but did not inspect leased spaces so had little knowledge about specific uses in the subject.

The witness did not make specific adjustments for location of the sales relative to the subject property.

The Board finds the witness's sales adjustment grid has missing information including the exclusion of the adjustments column for Sale 6. The Board finds that the land-to-building adjustments made to the sales are not supported or reasonable because they do not reflect the parking for the subject provided in a structure that is part of the adjacent medical complex. The Board also finds that although the witness's report states the predominant unit of comparison for a property of this type is price per net rentable square foot, he applied his price per square foot conclusion for the subject property to the gross building area to produce a total value. That error resulted in an erroneous increase in the value conclusion by the market approach.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject improvements of \$14,583,000.

Respondent used the income approach to derive a value of \$12,776,000 for the subject property. Respondent's witness contends the high vacancy claim made by Petitioner is inconsistent with the income received by the property. The property might have more physical vacancy but was still collecting rent for a higher occupancy.

Based on the analysis presented and giving equal weight to the three approaches to value, Respondent concluded to a value of \$13,740,000. Respondent assigned an actual value for the subject property of \$12,335,625 for tax year 2017 and requested the Board affirm that value.

The Board finds Respondent's witness testified he knew little about the St. Anthony North hospital relocation, or when it occurred. The witness did not have enough information to know if the relocation of the hospital would impact the value of the subject property. The Board finds the income approach does not consider the increased vacancy in the property as of the end of the based period on June 30, 2016 either through the use of a lower stabilized rent estimate or a higher vacancy and collection loss estimate. Nor does it adjust for the one-time lease termination fee revenue paid during the 18-month base period by tenants who moved to be close to the new St. Anthony North hospital facility. By not recognizing the drop in rent revenue for the vacated spaces, excluding the one-time lease termination fees, Respondent's analysis over-states the potential rent income contribution to value.

Sufficient probative evidence and testimony was presented to prove that the tax year 2017 valuation of the subject property was incorrect.

Section 39-1-104, C.R.S. requires that a base year system be established to assign values to property. Under that method, the value of property is based upon a specified base period which value is then used in calculating the property's assessed value each year until a new base period is established. *Carrara Place, Ltd. v. Arapahoe County Board of Equalization*, 761 P.2d 197 (Colo.1988).

Per Section 39-1-103(5), C.R.S., base year period is the one-and-one-half-year period immediately prior to July 1 immediately preceding the assessment date (the base period). *See e.g.*, Section 39-1-104(10.2)(d), C.R.S.; *Padre Resort v. Jefferson Bd. of Equal.*, 30 P.3d 813 (Colo. App. 2001).

Thus, the base period for the 2017 assessment is the 18-month period from January 1, 2015 through June 30, 2016, except that, if comparable valuation data is not available from such one-and-one-half year period to adequately determine the value of a class of property, the period of five years immediately prior to July 1, 2016, shall be utilized to determine the level of value for assessments for 2017. *See* Section 39-1-104(10.2)(a).R.S.

The date of appraisal is June 30 of the year preceding the year of general reappraisal. All applicable approaches to value must be trended or adjusted to this date. Section 39-1-104, C.R.S. provides that the date of assessment is to be January 1 each year and that all property is to be listed as it exists in the county where it is located on the assessment date. To distinguish between the two dates, the assessment date refers to the date upon which property situs (location), taxable status, and the property's physical characteristics are established for that assessment year, while the appraisal date refers to the date upon which the valuation of the property is based or otherwise adjusted or trended. *See* Assessors Reference Library, Volume 3, p. 2.2.

The Board finds that Petitioner's contingent fee arrangement with its expert witness was clearly disclosed to the Board. Considering the nature of Ryan, LLC's compensation, the Board regards Mr. Poling's valuation analysis as a consulting service as a tax agent, not an independent appraisal. In analyzing this case, the Board weighs the evidence provided by the tax agent as we see fit, considering the disclosed bias shown by the contingent fee arrangement with Ryan, LLC.

The Board finds Petitioner's claim credible that the relocation of the St. Anthony North Hospital to a new location early in the base period did have a detrimental impact on the income potential for the subject property. The Board finds the testimony of Respondent's witness that he did not find much information about the move and did not consider it in his valuation analysis is a material omission that affected his credibility. Respondent's witness did not address the impact on value of the 30% vacant space in the property as of the June 30, 2016 appraisal date. Respondent's appraisal report included numerous errors that affected both the value conclusions and the overall credibility of the analysis. The Board concludes Respondent's appraisal analysis did not produce credible results, so does not support the assigned value.

The Board finds Petitioner's valuation analysis is more punitive to the value of the subject property than is supported by the facts and accepted appraisal methodology. The Board agrees the excess vacancy as of the appraisal date must be reflected in the value, but no support was given to persuade the Board that if rented at a market rate as of June 30, 2016, the property would still not be capable of achieving a stabilized occupancy rate higher than 75%. The Board finds that vacant space in the property was marketed for a higher rent than used by Petitioner's witness in his pro forma and concludes that likely contributed to the high vacancy as of the appraisal date. The Board concludes that Petitioner's use of an atypically high stabilized vacancy rate; expenses supported solely by the analyst's experience; a conservative capitalization rate; a rent loss and leasing cost deduction based

on the atypically high vacancy rate; and deduction of a land value assigned by the assessor to the leased site rather than applying the actual land lease expense results in a conclusion of value that is not credible. The Board concludes that while it might be appropriate to use one or more conservative assumptions in the analysis, the assumptions in aggregate must not overstate the impact on the indicated value.

Because the Board was not persuaded the valuation analysis presented by the parties is credible, the Board has estimated a value for the subject property relying on evidence presented. The Board has relied on Petitioner's estimate of market rent of \$18 per rentable square foot; a 10% stabilized vacancy rate close to the actual vacancy at the property on January 1, 2015 prior to the hospital relocation; and the trailing 12-month reimbursable expense revenue less vacancy and collection loss. The operating expenses relied on are based on the actual expenses for the trailing 12-month period ending June 30, 2016 including the recoverable expenses, direct tenant charges, and non-recoverable expenses, adjusted to reflect the ground lease rent in effect on the appraisal date. The calculated net operating income (NOI) is \$836,632, which the Board finds is between the NOIs presented by Petitioner and Respondent. The capitalization rate surveys presented by Petitioner range from 6.45% to 8.0%. After considering the pro forma income and expense assumptions used, the Board relied on an above average capitalization rate of 7.5%. Applying that rate to the pro forma NOI of \$836,632 produces an initial indicated value of \$11,155,100, rounded. For the rent loss and leasing expenses associated with the excess vacancy on June 30, 2016 (30% actual vacancy versus the 10% stabilized estimate), the Board concludes the 12,074 square feet that would need to be leased to reach stabilized occupancy could be leased within one year at market rent. The Board has relied on the tenant finish allowance and leasing commission rates presented by Petitioner. The present value of the combined rent loss and leasing costs discounted over 12 months is \$490,400, rounded. Deducting that amount from the initial value results in a final conclusion of value of \$10,660,000. The Board finds that this value is lower than Respondent's assigned value of \$12,335,625 and concludes the assigned value did not adequately consider the impact of the St. Anthony North Hospital relocation on the value of the subject property on June 30, 2016.

The Board concludes that the 2017 actual value of the subject property should be reduced to \$10,660,000.

### **ORDER:**

Respondent is ordered to reduce the 2017 actual value of the subject property to \$10,660,000.

The Adams 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.

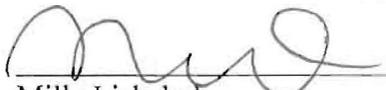
**DATED and MAILED** this 10th day of August, 2018.

**BOARD OF ASSESSMENT APPEALS**

  
Debra A. Baumbach

  
Louesa Maricle

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

  
Milla Lishchuk

