

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 73034

Petitioner:

WPC UNION COMMONS, LLC,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 18, 2018, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The parties stipulated to the admission of the expert witnesses, Petitioner's Exhibits 1 and 2, and Respondent's Exhibits A and B. The parties retained the right to object to specific information included in the exhibits.

Subject property is described as follows:

**66 S. Van Gordon Street, Lakewood, Colorado
Jefferson County Schedule No. 300140766**

The subject property is a 51,971 rentable square foot multi-tenant office building constructed in 1981. It is described by the Jefferson County Assessor as Class A fireproof steel frame construction with stucco, masonry and glass exterior walls. It is a two-story building with elevator and forced air heating and air conditioning throughout. The design includes an indoor central atrium common area. The quality of construction and condition are rated average. As of the June 30, 2016 appraisal date, the property was 100% occupied by two tenants. The building has adjacent on-site parking. The property is situated approximately 0.2 mile west of the Union Boulevard major arterial and commercial corridor. It is in a mixed-use area of office, lodging, retail, service retail, restaurants, infill vacant lots, and multifamily uses. Single family residences are primarily located to the west.

Petitioner is requesting an actual value of \$3,350,000 for the subject property for tax year 2017. Respondent assigned a value of \$5,654,200 for the subject property for tax year 2017.

Petitioner's Evidence

Petitioner presented the following indicators of value:

Cost Approach:	Not used
Market Approach:	\$3,378,115
Income Approach:	\$3,351,290

Petitioner presented Mr. Todd Stevens, President of Stevens and Associates Cost Reduction Specialists, Inc. as witness. Mr. Stevens testified he was engaged by Petitioner on a contingent fee basis to prepare a consulting assignment valuation of the subject property. The witness testified the central atrium design results in functional obsolescence that has a significant negative impact on the value of the subject property. The witness claimed the 50% vacancy in the property on the assessment date of January 1, 2017 had a negative impact on value for the subject on the June 30, 2016 appraisal date. Petitioner further claimed Respondent's use of qualitative rather than quantitative adjustments in the comparable sales and rent grids is not useful because they are not percentage adjustments. Petitioner objected to Respondent's use of comparables without disclosing the property addresses. The witness presented an appraisal of the subject property using the market, and income approaches to value.

Petitioner's witness presented a market approach using six comparable sales ranging in size from 32,600 to 136,592 rentable square feet and in price from \$41.83 to \$100.54 per square foot. The witness put most weight on Sale 1, a post base period sale that was listed during the base period. The witness testified it is an important sale because, like the subject property, it has a central atrium design. After the witness adjusted the sales for location, age of the improvements, economic characteristics, physical characteristics, and building size, the indicated sale prices ranged from \$40.57 to \$84.45 per square foot. The witness concluded to a value per square foot of \$65.00 and a total indicated value by the market approach of \$3,378,115.

Petitioner's witness presented an income approach using eight rent comparable leases ranging in size from 2,757 to 19,926 rentable square feet. The base lease rates ranged from \$14.00 to \$19.50 per square foot and were described by the witness as full service gross rents (indicating the rents include all expenses that would otherwise be passed through to the tenants). The witness concluded to a full service gross market rent for the subject property of \$15.00 per rentable square foot. In the witness's opinion, the 50% occupancy on January 1, 2017 had to be considered. The witness applied a 15% vacancy and collection loss rate based on the average submarket vacancy for all office properties in the second quarter of 2016 reported by Costar and after considering the 50% vacancy on the assessment date. The witness deducted \$5.75 per square foot for operating expenses, which he testified was based on the actual operating expenses for the subject. No deduction for replacement reserves was made. To support a capitalization rate the witness relied on ranges of rates reported in the Burbach & Associates, Inc. – Real Estate Investment Survey – Summer 2016. The witness testified he did not try to extract capitalization rates for the comparable sales he used. The witness

concluded to a base capitalization rate of 8.5%. After adding in the applicable property tax load, he applied a capitalization rate of 10.86% to his net operating income estimate to derive a rounded value of \$3,351,290 for the subject property.

After considering these approaches to value, Petitioner's witness testified he gave most weight to the income approach and concluded to a value of \$3,350,000 for the subject property on a stated date of value of January 1, 2017, for tax year 2017.

Respondent's Evidence

Respondent presented the following indicators of value:

Cost:	Not used
Market:	\$6,070,000
Income:	\$5,725,000

Respondent presented Mr. Robert D. Sayer, employed by the Jefferson County Assessor's Office, as witness. The witness has a Certified General Appraiser credential in the State of Colorado. The witness presented an appraisal of the subject property using the market, and income approaches to value.

Respondent's witness testified the subject property was 100% occupied on the June 30, 2016 date of the appraisal, and according to the rent roll, had been fully occupied since at least 2011. The witness agreed one of the tenants had moved out sometime after the appraisal date, but June 30, 2016 is the data collection cut-off date for the appraisal. The witness testified it was his opinion that no adjustment for the atrium design was necessary. The owner would recapture the associated expenses in the gross rents.

Respondent presented a market approach with five comparable sales ranging in size from 50,289 to 86,704 square feet of gross building area and in time adjusted price from \$84.66 to \$109.83 per gross square foot. Gross building areas were used to account for differences in common area square footage among the properties. The witness used qualitative adjustments such as "inferior", "similar", or "superior" to compare the sales to the subject for factors including, but not limited to, lot size, building size, age, vacancy, use, condition, and quality. After applying the qualitative adjustments, the witness concluded to an overall qualitative comparison of each sale to the subject and an indication that the sale price per gross square foot for each sale was considered inferior, similar to, or superior to the market value of the subject property. The witness concluded to a market value of \$100.00 per gross square foot for the subject and a total value of \$6,070,000 by the market approach.

Respondent's witness presented an income approach to value for the subject property. The witness presented four comparable lease rates for actual leases in properties in Lakewood. Because the lease information was taken from the Assessor's files and the witness is bound by confidentiality requirements, the city and street where each property is located were identified, but the street address numbers of the properties were not provided. The leases ranged in size from 48,931 to 97,167 square

feet and the full service gross rents ranged from \$17.50 to \$25.27 per rentable square foot. After the witness applied qualitative ratings to each of the comparable leases in comparison to the subject, he concluded to a market rent for the property of \$20.00 per rentable square foot. The witness applied an 11% vacancy and collection loss rate similar to the vacancy reported by CoStar for the end of the base period for office properties in the submarket. A breakdown of operating expenses by category was provided, totaling \$6.76 per square foot including replacement reserves. The witness referenced the BOMA 2016 Survey of Operating Expenses for Denver Suburban office buildings as support for his expense estimate. The witness acknowledged the market does not always include reserves, but testified he considered that in his selection of a lower capitalization rate. For the capitalization rate, the witness presented the rates for 26 office building sales in the Denver metropolitan area. The witness concluded to a base capitalization rate of 7.50% and a property tax loaded rate of 10.02%. Applying the 10.02% capitalization rate to the estimated net income for the subject property, the witness concluded to a value by the income approach of \$5,725,000.

The witness presented the rent roll for the subject property as of June 30, 2016, showing base rents plus expenses and the resulting gross rents of \$19.97 and \$20.79 per rentable square foot for the two tenants that occupied 100% of the building as of that date. The witness testified that Petitioner's witness claimed the leased rent for the subject property was approximately \$12.50 per rentable square foot, which is the base rent shown on the rent roll for State Farm. However, Respondent's witness showed the rent roll also listed the expenses added to the base rents for each tenant to derive the higher gross rents listed on the rent roll, which Petitioner did not use.

After considering both the market and income approaches, the witness concluded to a final value for the subject property of \$5,900,000, which is higher than the assigned value.

Respondent assigned an actual value of \$5,654,200 to the subject property for tax year 2017 and asked the Board to affirm that value.

Board's Findings

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

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 market, cost, and income data that county assessors use to apply the appropriate approaches to value is collected during specific periods prescribed by statute and represents a certain "level of value." Currently, the data collection periods and level of value change every odd numbered year, Section 39-1-104(10.2), C.R.S. *See* Assessors Reference Library, Volume 2, p. 3.1.

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 Petitioner's contingent fee arrangement with its expert witness was clearly disclosed to the Board. Considering the nature of Stevens & Associates' compensation, the Board regards Mr. Stevens' 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 Stevens & Associates.

The Board does not find Petitioner's claim that the property has significant functional obsolescence persuasive. No evidence was provided to prove the subject improvements include an excess ratio of common area space compared to the ratios for similarly sized office buildings without atriums or that atrium space does, in fact, impact rents or the sale prices investors are willing to pay. The Board concludes that Petitioner simply saying there is functional obsolescence present is not sufficient proof and that no evidence was provided that there is a measurable impact on value. The Board finds that Petitioner's witness incorrectly identified the date of value as January 1, 2017 in his consulting report. That is the assessment date, but by statute, the date of value is the date of the appraisal on June 30, 2016. The Board also finds that Petitioner's claim that the 50% vacancy in the property on January 1, 2017 is the factor that must be used is also incorrect. Based on statute, the data collection period cut-off is June 30, 2016. Regarding Petitioner's claim that Respondent's qualitative adjustments are not useful because they are not percentage adjustments, the Board finds that both types of adjustments are accepted appraisal methodologies. The Board further finds that the percentage adjustments used by Petitioner's witness are not supported by any analysis demonstrating that the magnitude of the adjustments made are reasonable. Therefore, the Board concludes that Petitioner's percentage adjustments are subjective and have similar credibility as Respondent's qualitative adjustments.

Petitioner's witness testified he gave most weight to the value indication produced by Sale 1 in his market approach. Based on testimony, the Board finds that Sale 1 was listed for sale but was not under contract during the base period. The sale occurred after the applicable data collection period. The witness testified the price shown in his adjustment grid is the post base period sale price, not the listing price and the witness could not provide the listing price. The Board concludes that Petitioner's Sale 1 cannot be considered further for this 2017 appeal. Regarding Petitioner's other sales, the Board finds no persuasive evidence was presented to demonstrate there was no duplicative adjustment made by the witness relative to his economic characteristics and location adjustments. The Board finds that no credible evidence was provided to support the witness's claim that no adjustments for building improvements size were necessary for any of the remaining five sales. Sale 2, for example, is more than twice the size of the subject building. The witness testified that Sale 2 has two buildings not just one, so no adjustment for size was needed. Using that logic, the four buildings included in Sale 3 would have justified a size adjustment by the witness because the individual buildings have a much smaller average building size of 15,543 square feet compared to the subject. However, no such adjustment was made. Because of the inconsistencies in the analysis of Sales 2 through 6, the remaining questions regarding potential duplicated or overlapping adjustments, and Petitioner's conservative conclusions in all aspects of the analysis that consistently reduce the conclusion of value, the Board concludes Petitioner's market approach analysis does not produce a credible indication of value.

For Petitioner's income approach, the witness testified the State Farm space in the subject property was marketed for lease during the BP, but he did not ask Petitioner for the listing rent because he did not believe it was relevant. The Board finds no evidence presented in Petitioner's exhibits to persuade us the rental rate comparables relied on in his rent adjustment grid show full service gross rents, as represented by the witness. Although Petitioner's witness testified he used a "full service gross basis" market rent, based on the rents reported for both parties' comparable sales, and the Jefferson County and Denver metropolitan area office market statistics presented by Respondent, the Board finds the rent conclusion used by Petitioner is more indicative of the base rent before operating expenses are factored in to reach a gross rent. The Board finds Petitioner's use of a 15% vacancy that considered the loss of one tenant in the subject as of January 1, 2017, relied on post data collection period information. The Board finds the subject had a 100% occupancy the previous 5 years at a minimum, so without other support, applying a 15% vacancy for capitalization into perpetuity is punitive to the property. Petitioner did not provide the CoStar report relied on for the submarket rent or vacancy statistics during the applicable base period, as support. Petitioner's consulting report says the operating expenses used are based on actual operating expenses for the subject property, but no operating statements are provided to show the expenses used are reasonable. The Board finds the witness relied solely on the Burbach & Associates Summer 2016 investor survey to select a base capitalization rate. The Board finds the Burbach survey included in Petitioner's Exhibit I states it "...is a summary of the survey respondents' perceptions of the real estate market in the West/Central United States". The Board concludes that while the survey can be useful for market indicators in a general sense, it does not present capitalization rates from actual sales that could be considered comparable. The witness testified he did not try to extract cap rates from his comparable sales. After considering the quality of the data used, the Board concludes Petitioner's valuation analysis did not produce more credible results than Respondent's analysis.

The Board finds the analysis presented by Respondent's witness more credible in all but one respect. The witness testified the rent comparables he relied on were from actual leases, but that he could not say if the leases were signed within the base period. However, the lease rates shown in his analysis were in effect during the base period. Even though the leases might have been executed before the base period, it was his opinion that because leases include rent escalations over the lease terms, the lease rates used represent market rents. The Board finds that an analysis of current market rents must be completed to determine if lease rates reported for leases signed at previous times are, in fact, at market. The Board finds that analysis was not done by Respondent's witness. Despite that, the Board concludes that the market rent conclusion used by Respondent's witness is much better supported by the rents shown for the sales used by both parties and the office market statistics presented by Respondent for both Jefferson County and the metropolitan area than Petitioner's lower conclusion of market rent. Therefore, the Board concludes that Respondent's analysis is more credible than Petitioner's.

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 26th day of October 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Louesa Maricle

Louesa Maricle

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

Milla Lishchuk

Milla Lishchuk

