

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TARGET CORPORATION,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 73626</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 22, 2018, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by H. Michael Miller, Esq. Respondent was represented by Casie Stokes, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Dockets 73625 and 73626 were consolidated for purposes of the hearing. Respondent filed a *Motion In Limine To Exclude Evidence*, which was identified as an Appraisal Report prepared by Cushman & Wakefield of Colorado, Inc. (Petitioner's Exhibit 1). The Board denied Respondent's motion in part, by admitting Exhibit 1 into evidence; however, the Board did not consider valuation information beyond the base period within the Appraisal Report. This includes, but is not limited to, land and building sales, along with lease transactions, that occurred beyond the base period.

The subject property is described as follows:

**1985 Sheridan Boulevard, Edgewater, Colorado
Jefferson County Schedule No. 300451608**

The subject is a 127,789-square foot owner occupied, big box retail store. The property was completed in 2007 and is situated on a 10.2-acre site.

Petitioner is requesting an actual value of \$10,850,000 for the subject property for tax year 2017. Respondent assigned a value of \$15,152,796 for the subject property for tax year 2017 but is recommending a reduction to \$14,700,000.

Petitioner's witness, Andrew F. Lorms, Certified General Real Estate Appraiser with Cushman & Wakefield of Ohio, Inc., presented the sales comparison and income approaches to support a value of \$10,850,000. Mr. Lorms concluded that the cost approach would not produce a reliable indication of value for the subject because of building age and functional obsolescence associated with building size.

Respondent's witness, Michael H. Earley, Certified General Real Estate Appraiser with the Jefferson County Assessor's Office, presented the cost, sales comparison, and income approaches to support a value of \$14,700,000.

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. A taxpayer who meets the burden of demonstrating that an assessment is incorrect need not also show an alternative valuation under the market approach to prevail. *Reiber v. Park Cnty. Bd. Of Equal.*, 14CA6 (Colo. App. 2014).

After consideration of all three approaches to value, the Board finds that the sales comparison approach provides the most reliable indication of value for the subject; which is an owner-occupied, big box retail building. "Typically, the sales comparison approach provides a credible indication of value for commercial and industrial properties suited for owner occupancy, i.e., properties that are not purchased primarily for their income-producing characteristics" (*Appraisal of Real Estate*, 14th Edition, Pg. 380). Based on testimony of both parties, the Board was convinced that there were a limited number of applicable sales from the statutory base period ending June 30, 2016.

Section 39-1-106, C.R.S., "requires that the fee simple interest in property be valued for property tax purposes. The valuation process should reflect a market value, using market assumptions, including market rent, market expenses, and market occupancy". (ARL Vol. 3, Pg. 7.11).

In appraising the subject, Mr. Lorms considered sales of big box retail buildings purchased for owner-occupancy, representing the fee simple interest. After eliminating sales that transacted beyond the base period, Mr. Lorms provided two local sales that the Board found persuasive. After adjustment, Mr. Lorms' two local sales indicated a slightly higher overall range of \$54.20 to \$79.33 per square foot. (Sales 6 and 7, Exhibit 1-79 and 1-80). Three national sales purchased for owner-occupancy suggested a value towards the lower end of the adjusted local range. (Sales 4, 5 and 6, Exhibit 1-89, with supplemental notes).

Respondent contends that Mr. Lorms considered numerous sales that occurred beyond the statutory base period when he concluded to a unit value of \$85.00 per square foot or a total value of \$10,850,000, rounded. The Board agrees. The appraisal indicates that the greatest consideration was given to Sales 2, 4, 5 and 6 to support the concluded value. After elimination of post-base period Sales 2, 4 and 5, Petitioner's Sales 6 and 7 suggest a lower value.

Conversely, Respondent's witness provided five sales of leased properties representing the sale of the leased fee interest. "The sale of a property encumbered by a lease involves rights other

than the complete fee simple estate, and valuation of those rights requires knowledge of the terms of all leases and an understanding of the tenant or tenants occupying the premises.” (*Appraisal of Real Estate*, 14th Edition, Pg. 405-407). Further, “If the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate of another property, the comparable sale can only be used if reasonable and supportable market adjustments for the differences in rights can be made.” *Id.* The Board notes that, “To compare this leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent.” *Id.*

If using sales of the leased fee estate, “Calculations of appropriate adjustments reflecting differences in property rights may be difficult to develop and support. *Id.* Properly developed adjustments require significant research and diligence. Ideally, the comparables selected for analysis include the same types of property rights as the subject property, so adjustments are not needed.” *Id.*

Respondent’s witness, Mr. Earley opined that no adjustment was required for the difference in property rights conveyed between the owner-occupied subject and the leased comparable sales; a conclusion that the Board found unsupported. Mr. Earley testified that he had not reviewed the relevant leases and was not able to confirm the details of the leases with parties involved in the transactions.

Mr. Earley testified that Petitioner had failed to include an upward adjustment to Petitioner’s Sale 6 for post purchase expenditures of \$2.5 million. The Board was most convinced by Mr. Earley’s testimony that the expenditure was in fact for the new owner’s specific space requirements (tenant improvements) rather than deferred maintenance; and, that further adjustment to Sale 6 was not supported.

Both parties considered the income approach to value the subject. Neither party provided compelling evidence to support the conclusions applied in this approach. Mr. Lorms’ report lacked base period evidence with only one comparable rental property. The Board was convinced that Mr. Earley incorrectly concluded to a rental rate for the subject based on contract rent in-place derived from other properties over market rent for transactions during the base period.

“Market rent is the rental income a property would command in the open market. It is indicated by the current rents that are either paid or asked for comparable space with the same division of expenses **as of the date of the appraisal**,” and that “... Market rents vary with economic conditions.” (*Appraisal of Real Estate*, 14th Edition, Pg. 447) “Economic conditions change, so leases negotiated in the past may not reflect current prevailing rents.” *Id.* at 466.

Respondent also provided an opinion of value based on the cost approach. Petitioner contends that Respondent failed to consider adequate depreciation (specifically functional obsolescence attributable to the size of the subject) despite Respondent’s own admission that the value “may not reflect an adequate depreciation estimate for the improvement.” (Respondent’s Exhibit A, Pg. 16).

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect. The Board concludes that the 2017 actual value of the subject property should be reduced to \$10,850,000.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$10,850,000.

The Jefferson 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 26th day of June, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier

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

Milla Lishchuk

Milla Lishchuk

