

<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>ADVANCED STORAGE KIPLING, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 75101</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 5, 2019, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is protesting the 2018 actual value of the subject property.

**EXHIBITS AND WITNESSES**

Respondent stipulated to the admission of Petitioner’s Exhibit 1, Rebuttal Exhibits 2-5, and the admission of Mr. Richard M. Lawless as an expert witness. Petitioner stipulated to the admission of Respondent’s Exhibit A, and the admission of Mr. Joel Cuthbert as an expert witness.

**PROPERTY DESCRIPTION**

**2555 S. Lewis Way, Lakewood  
Jefferson County Schedule No. 300464226**

The subject involves a partially completed, three-story, self-storage property situated on a 2.02-acre site. Petitioner described the subject as having 102,700 square feet of gross building area and 78,175 square feet of net rentable area. Respondent described the subject as having 104,596 square feet of gross building area and rentable area of 77,189 square feet. The Board finds Petitioner’s description of the subject’s dimensions to be accurate.

## **PETITIONER'S PRESENTATION**

Petitioner's witness, Mr. Richard M. Lawless, Certified General Appraiser with National Valuation Consultants, Inc., prepared an appraisal of the subject property. Mr. Lawless described the subject and testified to the subject's condition on January 1, 2018. He testified that he did not inspect the property on January 1, 2018 but was provided with time-stamped photos of the subject. Mr. Lawless determined that on the assessment date foundation was in place, exterior walls were being erected, the roof was not installed, plumbing was not completed, mechanical was not completed, and electrical work was not started. From the photos, the witness estimated that the property was approximately 50% complete. However, after reviewing the guidelines in the Assessor's Reference Library (ARL), Mr. Lawless determined that, under the ARL, the subject did not meet the 50% complete threshold and therefore assigned the 25% complete to the subject. Recognizing that the ARL's guidelines apply to the residential properties, Mr. Lawless presented two values for the subject: one value at 50% complete (\$4,100,000) and another value at 25% complete (\$2,700,000).

Mr. Lawless presented a cost approach in valuing the subject. He concluded to the land value of \$1,200,000. In developing the cost approach, the witness relied on the developer's actual projected cost budget for the subject. For comparison, Mr. Lawless also provided a replacement cost estimate for the subject using Marshall Valuation Service. Mr. Lawless reconciled to a market value via cost approach based on 25% complete of \$2,800,000 and \$4,200,000 based on 50% complete.

Mr. Lawless also developed a value for the subject using the sales comparison approach consisting of five comparable sales of self-storage properties. The comparable sales were adjusted for market conditions, location, physical characteristics and economic characteristics. The witness concluded to the subject's value of \$2,700,000 based on 25% complete and \$4,100,000 based on 50% complete via the sales comparison approach.

For the income approach, Mr. Lawless presented five rent comparables of self-storage facilities. Mr. Lawless concluded to gross potential income for the subject of \$1,163,736. After the deduction for vacancy, collection loss and expenses, the witness concluded to the net operating income of \$771,521, or \$9.87 per square foot. The witness relied on the actual local sales, investor surveys and broker comments to conclude to a stabilized capitalization rate of 6.25%. Mr. Lawless concluded to the subject's value of \$2,700,000 at 25% complete and \$4,100,000 at 50% complete via the income approach to value.

Mr. Lawson relied most heavily on the income approach to reconcile to the subject's 2018 value of \$2,700,000 at 25% complete and \$4,100,000 at 50% complete.

## **RESPONDENT'S PRESENTATION**

Respondent presented Mr. Joel Cuthbert, Colorado Certified General Appraiser as a witness. Mr. Cuthbert testified that he inspected the subject property on December 31, 2017. Mr. Cuthbert testified that the ARL's directives pertaining to partially constructed improvements apply only to residential properties and, as such, not applicable to commercial properties. Based on his exterior

inspection of the subject and his review of AIA documents provided by the subject's owner, Mr. Cuthbert determined that the property was approximately 55% complete on the January 1, 2018 assessment date.

Mr. Cuthbert testified to the cost approach he developed in valuing the subject. Respondent's witness concluded to the land value of \$1,200,000. He used Marshall Valuation Service to estimate the replacement cost of the improvements. Mr. Cuthbert added entrepreneurial profits of 20% to the direct and indirect building costs to arrive to the subject's value of \$8,870,000 as if 100% complete at 0% occupancy. After the application of 55% complete, the witness concluded to the subject's value of \$5,420,000 via the cost approach. In Mr. Cuthbert's opinion, cost approach is the most reliable approach in valuing the subject.

Mr. Cuthbert also testified to the income approach he developed in valuing the subject. Respondent's income approach relied on six comparable self-storage facilities. The witness concluded to the capitalization rate of 5.75%, which he loaded with effective tax rate. Mr. Cuthbert concluded to the subject's value of \$9,500,000 as if 100% complete at 0% occupancy. After the application of 55% complete factor, the witness concluded to the subject's value of \$5,765,000 via the income approach.

Relying primarily on the cost approach, Mr. Cuthbert reconciled to the subject's value of \$5,420,000 for tax year 2018. Respondent assigned a value of \$5,336,521 for the subject property for tax year 2018.

### **BURDEN OF PROOF**

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

### **BOARD'S FINDINGS**

Both Petitioner and Respondent provided photographs from just prior to the assessment date, with Respondent's photos dated December 31, 2017. The structure appeared to be approximately 25% complete, with exterior wall framing for all floors erected and utilities extended from main service to structure. However, photos indicate there was no roof in place, rough framing was not in place, and reportedly, the plumbing, electrical, and mechanical systems were not in place. The Board finds that the subject was not at 50% completion on the assessment date.

While all three approaches to value are relevant, the Board finds the cost approach most applicable in providing an estimate of value as a partially complete facility. Petitioner relied on the developer's actual budgeted base building cost, with support from Marshall Valuation Service cost

data for an “average/good” quality construction. Petitioner then added 15% for entrepreneurial profit, \$1,800,000 for the cost of leasing the property to a stabilized level, and land value of \$1,200,000, for a total project costs of \$8,800,000.

Respondent dismissed Petitioner’s actual cost data, inflated the quality of the subject as “good” using MVS data, and relied on un-sourced and/or confidential cost comparable data, yet concluded to a similar value of \$8,870,000 based on the cost approach.

Based on completion of 25%, Petitioner concluded to a value of \$2,700,000 for the subject. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2018 valuation of the subject property was incorrect.

The Board concludes that the 2018 actual value of the subject property should be reduced to \$2,700,000.

### **ORDER**

The Petition is **GRANTED**.

Respondent is ordered to reduce the 2018 actual value of the subject property to \$2,700,000.

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 4th day of October, 2019.

**BOARD OF ASSESSMENT APPEALS:**

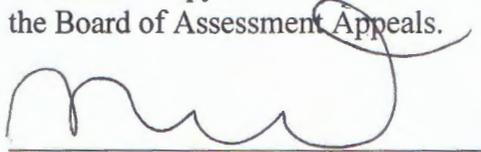
**Drafting Board Member:**



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Sondra W. Mercier

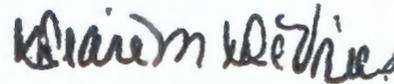
I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



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Milla Lishchuk

**Concurring Board Member:**



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Diane M. DeVries,  
*concurring without modification pursuant to  
Section 39-2-127(2), C.R.S.*

