

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 76008
Petitioner: SPIRIT MASTER FUNDING X, LLC, v. Respondent: BROOMFIELD COUNTY BOARD OF EQUALIZATION.	
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on February 6, 2020, Debra A. Baumbach and Samuel M. Forsyth presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Karl Frundt, Esq. Petitioner protests the valuation of the subject property for tax year 2019.

EXHIBITS AND WITNESSES

The Board admitted Petitioner’s Exhibits 1-4 and Respondent’s Exhibit A. The Board also admitted expert testimony by Petitioner’s witness Chris Baker, Certified General Appraiser holding an MAI designation, and Respondent’s witness William Stuhlman, Certified General Appraiser employed by the Broomfield County Assessor.

STIPULATIONS

The Board accepts all 15 stipulations of the parties, including a stipulation that the cost approach to appraisal is not applicable to the determination of the subject property’s actual value for tax year 2019.

DESCRIPTION OF THE SUBJECT PROPERTY

1660 W. Midway Boulevard, Broomfield, Colorado 80020
Broomfield County Schedule No.: R1016280

The subject property, which is classified as commercial, was originally constructed in 1995 as a Target store, and is now leased to At Home Stores LLC as a home decor store. The subject improvement is 117,202 square feet, and the site size is 488,925 square feet. As of the assessment date, the construction and condition of the improvements were average.

On July 20, 2013, Target Corporation sold the subject property to 1660 Midway Boulevard LLC for \$3,500,000. On August 1, 2016, the subject property was then sold to Spirit Funding X, LLC in a sale-leaseback transaction for \$8,518,600. Ex. 1, p. 12. At closing, purchaser leased the subject property to At Home Stores LLC under a Master Lease Agreement, which provided that rent is absolutely net to the landlord.

The subject property’s actual values—as assigned by the County Board of Equalization (“CBOE”) below, recommended and requested by the parties, and concluded by this Board—are:

CBOE’s Assigned Value:	\$8,329,770
Respondent’s Recommended Value:	\$8,800,000
Petitioner’s Requested Value:	\$7,040,000
Board’s Concluded Value:	\$8,189,000

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor’s valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm’n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board “is commonly understood as a new trial of an entire controversy.” *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.*

APPLICABLE LAW, FINDINGS, AND CONCLUSIONS

I. Sales Comparison Approach Analysis

Petitioner's appraisal states that the sale of the subject property in 2016 represented a net leased investment because it included a 15-year term with four 5-year options to a BB Credit Tenant. Petitioner contends that the long-term lease represented a more secure investment than a sale with a 10-year lease in place and that this sale represented a leased fee interest in the property. As statute requires that the fee simple value must be determined for ad valorem valuation, Petitioner argues that a comparable sale with an imbedded long term lease must be adjusted downward compared to a fee simple transfer.

Accordingly, Petitioner's appraiser identified and analyzed six comparable sales. Sale 6 was the subject property sale in 2016. The unadjusted sale prices per square foot range from \$47.16 to \$74.37. After adjustments for market conditions (time), conditions of sale, and property rights, the values per square foot range from \$45.70 to \$74.37. After additional adjustments for location, size, age/condition, and quality, the adjusted values per square foot range from \$47.99 to \$66.94. The reconciled value is \$60 per square foot indicated a value by the sales comparison approach, for a total of \$7,032,120 (\$7,030,000 rounded).

The Board finds that Petitioner's comparable sale selections are questionable and that Petitioner applied large adjustments that are neither clear nor supported. Regarding the selection of sales, three of the comparables sales are change in use sales. Sale 1 was purchased by a church for religious use, and represents change in use from commercial to religious. Sales 3 and 4 are change in use from grocery retail to fitness. Sale 5 is located in Colorado Springs which is well outside the Denver Metro marketing area. Petitioner applies significant adjustments of 10% or more on each of five of the six comparables. Location/exposure downward adjustments of -10% are made to Sales 1 and 5 and -15% to Sale 2. An upward adjustment of 10% is made to Sale 3 for location/exposure. Petitioner states the reason for the adjustments but offers neither market support nor quantified support for the size of the adjustments. Of greater concern to the Board is the substantial adjustment of -15% for property rights sold to Sales 5 and 6 (Sale 6 being the sale of the subject property). Petitioner states that a downward market adjustment should be made for sales which represent leased fee transactions, i.e. sales that include a long term lease a credit tenant leasing at market rents. The Board acknowledges that this is an appropriate factor to consider. The Board however finds no quantified analysis to support the degree of this adjustment. Regarding the -15% property rights adjustment for Sale 5, Petitioner states: "A downward adjustment was applied for property rights due to the long term lease (35 years firm + options) to a BB rated credit Tenant for this comparable being superior to the fee simple assumption of a short duration market lease term and average quality occupant." Ex. 1, p. 49. Regarding the -15% adjustment to Sale 6 (the sale of the subject), the same explanation was offered. Ex. 1, p 50. Although Petitioner references *The Appraisal of Real Estate* both in the body of the appraisal and Ex. 2 for support in considering property rights when appraising a property (Ex. 1, p. 42; Ex. 2), this same reference source also provides: "Calculations of appropriate adjustments reflecting differences in property rights may be difficult to develop and support." Appraisal Institute, *The Appraisal of Real Estate*, 14th Edition, p. 407. The Board concludes that Petitioner's minimal support for this difficult adjustment, and particularly for the

size of the adjustment, renders Petitioner's adjustment for this factor on Sales 5 and 6 not credible. The Board finds that the sale of the subject property, which is included in Petitioner's inventory of sales and referenced in the appraisal, is the most credible and reliable sale of the comparable sales chosen by Petitioner.

Respondent's appraiser identified three comparable sales, one of which is also analyzed by Petitioner (14000 East Jewell Avenue, Respondent's sale 1, Petitioner's sale 1). The sale prices per square foot before adjustments ranged from \$73.47 to \$84.08. Adjustments to the comparables were made for floor area ratio, location and size. After adjustments, the sale prices per square foot ranged from \$66.67 to \$84.86. Respondent's appraiser reconciled the sale price per square of the comparables to \$75, concluding to a value by the sales comparison approach of \$8,800,000.

The 2018-2019 Uniform Standards of Professional Appraisal Practice ("USPAP"), at page 13, provides guidance on the acceptable scope of work and level of detail to be included in an appraisal:

SCOPE OF WORK ACCEPTABILITY

The scope of work must include the research and analysis that are necessary to develop credible assignment results. [...] The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peer's actions would be in performing the same or a similar assignment.

The Board finds the appraisal report of the Respondent to be lacking in detail under USPAP for a property of the size and complexity of the subject, and insufficient to rebut Petitioner's evidence of error under de novo review by this Board. Although Respondent's appraisal states: "The following analysis was performed in order to provide credible assignment results," (Ex. A, p. 3), it lacks discussion of any detail of the adjustments made to the comparables in the sales comparison approach.

The Board therefore places more emphasis and analysis on the appraisal provided by Petitioner. The Board, however, finds several deficiencies in Petitioner's appraisal as well.

II. Income Approach Analysis

For the income approach, Petitioner's appraiser identified four comparable leased properties to determine rent per square foot. Before adjustments for conditions of lease, market conditions (time), location/access/exposure, size, age/condition, and quality, the rent ranged from \$3.50 to \$9.00 per square foot. After adjustments, the rent ranged from \$3.82 to \$5.58 per square foot. Petitioner's appraiser concluded to \$5.50 per square foot. He then concluded to total

stabilized vacancy and collection loss allowance of 5%. The appraiser projected an unreimbursed expense rate of 3% for administrative expense, 2% for management, and \$.15 per square foot for replacement reserves for and expense rate of 7.9%. Based on capitalization rates derived from two of the sales in the sales comparison approach and 5 At Home sales across the country, investor surveys, and market participants, the appraiser concluded to a capitalization rate of 8%. The indicated value derived from the income capitalization approach is \$7,052,264 (\$7,050,000) rounded.

Respondent identified five 'Big Box' retail rent rates in the Denver Metro area. The size of the rental comparables ranged from 44,360 to 61,880 square feet with an average of 55,930 square feet. Three of the rental comparables listed asking rents. Two of the rental comparables listed actual rent. These rent rates range from \$8.00 to \$15.00 per square foot for asking rent, and \$10.00 to \$12.70 per square foot for actual rent. Respondent provided no adjustment grid and no complementary information on the rental comparables except for location, occupancy, year built or size of improvements. Respondent concluded to \$7.00 per square foot which was characterized as a 'Base Model.' A vacancy/collection loss rate of 5% was used. The Respondent concluded to an owner's expense rate of 10%. Regarding the development of the capitalization rate, the Respondent only stated: "Capitalization Rates were derived from sales where available and also analyzed using survey data. A big box rate of 8% was selected." Ex. A, p. 21. The Respondent provided no sale-derived market comparable capitalization rates. The survey that the Respondent provided is the *Real Estate Investment Survey-Summer 2018*, by Burbach and Associates, Inc. This survey indicates the capitalization rate reported by Big Box users to be between 6.00% to 6.50%. Using a rentable area square footage of 111,342, the Respondent concluded to a value using the income approach of \$8,329,775.

Respondent provides no adjustment grid to aid this Board in the Respondent's conclusion of rent per square foot. Further, the development of the capitalization rate is inconsistent with the only support offered, and lacks any analysis. As a result, Respondent's conclusion of the rate is not credible.

The Board places more weight on the income approach. The Board's analysis of the subject property's actual value by the income approach follows.

Vacancy/Collection Loss: The Board accepts and finds credible Petitioner's conclusion of the vacancy/collection loss of 5%.

Rental Rate: The Board is not convinced that the market rent concluded by Petitioner is credible. The Board concludes from the more similar and proximate rental comparables that the rental rate is appropriately set at \$6.00 per square foot.

Expense Rate: *The Appraisal of Real Estate*, 14th Edition provides guidance for whether and how, under the income approach to value, appraisers should account for reserve for replacements when calculating the expense rate:

The appraiser must know whether or not a replacement allowance is included in any operating statement used to derive a market capitalization for use in the income capitalization rate approach. It is essential that the income statement of comparable properties be consistent. Otherwise, adjustments will be required. A capitalization rate derived from a comparable is valid only if it is applied to the subject property on an equivalent basis. Consequently, a rate derived from a sale with an expense estimate that does not provide for a replacement allowance should not be applied to an income estimate for a subject property that includes such an allowance without an adjustment that reflects the difference. Investor survey rates may or may not include deduction for replacement allowances and the appraiser must exercise caution in applying capitalization and discount rates from surveys.

Appraisal Institute, *The Appraisal of Real Estate*, 14th Edition, p. 486.

The Board concludes that Petitioner’s inclusion of the reserve for replacements allowance is not reflective of the market and should not be included. The Board finds that Petitioner’s appraisal does not address the recommended guidelines listed above. The Board accepts the administrative expense rate of 3% and the management rate of 2%.

Capitalization Rate: Petitioner’s appraisal reports the market derived capitalization rate from two of the six sales analyzed in the sales comparison approach. Both are At Home Superstores. Sale 5 in Colorado Springs yielded a 6.19% capitalization rate. The sale of the subject, Sale 6, represented a rate of 7.22%. Petitioner then identified five At Home sales from across the country with capitalization rates that ranged from 7.22% to 8.5% averaging 7.97%. The average rate of all the market derived capitalization rates from sales is 7.61%. The appraiser reported rates from Investor Surveys averaging 7.76%. From Petitioner’s own data, the Board concludes to a capitalization rate of 7.75%.

The Board concludes to a value by the income approach as follows:

Potential Gross Income:	\$6 per square foot	\$ 703,212
Expense:	5.00% rate	\$ 35,161
Potential Net Income:		\$ 668,051
Operating Expense:	5.00% rate	\$ 33,403
Capitalization:	7.75% rate	\$ 634,649
Actual Value:		\$ 8,189,000

Board’s concluded value is \$8,189,000.

ORDER

Petition is GRANTED. Respondent is ordered to reduce the 2019 actual value of the subject property to \$8,189,000. The Broomfield County Assessor is directed to change its records accordingly.

APPEAL RIGHTS

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. (2019).

DATED and MAILED this 23rd day of April, 2020.

BOARD OF ASSESSMENT APPEALS:



Drafting Board Member:

Samuel M. Forsyth

Concurring Board Member:

Debra A. Baumbach

*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

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

Jacqueline Lim