

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>AURORA STORAGE, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 76062, 80109</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on November 17, 2020, Diane DeVries and Sondra Mercier presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the actual value of the subject property for tax years 2019 and 2020.

The Board conducted a combined hearing for the appeals assigned docket number 76062 (an appeal of the 2019 taxable value assigned to property owned by Aurora Storage, LLC) and docket number 80109 (an appeal of the 2020 taxable value of the same property). The Board also incorporated testimony from this appeal into the hearing concerning the appeal of the 2019 and 2020 value of property owned by Hilltop Storage, LLC, assigned docket numbers 76069 and 80106.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibits 1-2 and Rebuttal Exhibits 2-2, 3-2, 4-2, 5-2, and 6-2. The Board admitted Respondent’s Exhibit A-2 and Rebuttal Exhibits B-2, C-2, D-2 and E-2. The Board admitted Jessica M. Ballou, Certified General Appraiser with National Valuation Consultants, Inc., and Stefani Sanchez, with the Arapahoe County Assessor’s Office, as expert witnesses.

DESCRIPTION OF THE SUBJECT PROPERTY

7505 S Addison Court, Aurora, Arapahoe County Schedule No. 2073-36-1-35-001

The subject property is owned by Petitioner, Aurora Storage, LLC. The subject is a 616-unit, climate-controlled, self-storage facility with approximately 79,775± square feet of rentable

area. The building was completed in late-2018 and rated good/excellent for condition, categorized by Petitioner’s witness, Ms. Ballou, as a Class A institutional quality facility. The building is situated on a 4.87-acre site.

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

CBOE’s Assigned Value:	\$6,891,703
Respondent’s Recommended Value:	\$6,891,703
Petitioner’s Requested Value:	\$5,500,000

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 (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 Commission*, 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 the BAA, 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 Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, a 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 AND AUTHORITATIVE SOURCES

As a general rule, section 39-1-106, C.R.S., requires that the fee simple estate in property be valued for property tax purposes. *City and Cnty of Denver v. Bd. of Assessment Appeals of the State of Colo.*, 848 P. 2d 355, 359 (Colo. 1993). Market value of the fee simple estate should reflect market assumptions, including market rent, market expenses, and market occupancy. *Assessor’s Reference Library – Volume 3, Real Property Valuation Manual*, Division of Property Taxation, Page 2.2, Dated 1-89, Rev. 4-20.

The Dictionary of Real Estate Appraisal defines market value as follows:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and

for self-interest, and assuming that neither is under undue duress.

Appraisal Institute, *The Dictionary of Real Estate Appraisal* (6th ed. 2015), p. 141.

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

Market value of the fee simple estate should reflect market assumptions, including market rent, market expenses, and market occupancy. *Assessor's Reference Library – Volume 3, Real Property Valuation Manual*, Division of Property Taxation, pg. 2.2, dated 1-89, Rev. 4-20.

The income approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Bd. of Assessment Appeals of the State of Colo. v. Sonnenberg*, 797 P.2d 27, 31 (Colo. 1990). It generally involves calculating the income stream (rent) the property is capable of generating, capitalized to value at a rate typical within the relevant market. *Id.* “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...” *The Appraisal of Real Estate*, 14th Edition, pg. 447. “Market rents vary with economic conditions.” *Id.* “Economic conditions change, so leases negotiated in the past may not reflect current prevailing rents.” *Id.* at 466.

FINDINGS AND CONCLUSIONS

Based on the findings and conclusions presented, the Board finds that Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 2019 and 2020.

I. Appraisal Methodology

Both parties developed and gave some consideration to the cost, sales comparison and income approaches to value. The parties gave the greatest weight to the income approach in their final reconciliation of value.

The subject is a self-storage facility, which is an income producing investment property. The Board concurs that the income approach best reflects the methodology that a typical buyer would use in determining market value for the subject.

II. Competitive Market Analysis

Ms. Ballou testified that market conditions for self-storage facilities peaked in 2016. However, market saturation caused economic conditions for this property type to decline in 2017 and 2018 with a decline in occupancy and rent.

Relative to the competition, Ms. Ballou testified that the utility of the property is negatively impacted by the topography of the site. Construction costs were higher due to a requirement for extra reinforcement and retaining walls to address the slope of the site. While it is directly adjacent to E-470, visibility is limited by site grade and arterial curve. Access is awkward from E-470 and limited to a single entrance off of South Addison Court. (Exhibit 1-2, pg. 39.)

The Board was convinced that a lack of population within the primary trade area compared to competition from four properties resulted in an oversupply of units. Petitioner supported their contention of oversupply by a comparison of the ratio of total rentable square footage to population. Including the subject, the primary trade area represented a supply of 10.35 square feet per person, or 8.22 square feet per person when averaging the secondary non-specific site data. Compared to a national ratio of 7.06 square feet per person, a State ratio of 9.14 square feet per person, and a metro area ratio of 6.15 square feet per person, the subject's trade area was found to be closer to equilibrium but still in oversupply compared to the current population. (Exhibit 1-2, pgs. 57- 60.)

The Board did not find the trade area analysis presented by Respondent compelling, as it relied heavily on survey data for the metro area and region, well beyond the subject's trade area. (Exhibit A-2, pgs. 43-51.)

III. Income Approach

The Board found the appraisal report prepared by Petitioner compelling. Ms. Ballou performed a site-specific appraisal, basing many of her projections on data from two properties located within the 3-mile trade area and two additional competitive properties nearby but outside the trade area.

As the subject was completed during the base period, there was inadequate historical operating income for either party's appraiser to rely on. To determine market rent for the subject, Ms. Ballou projected rent for the subject based on that of the four most competitive properties. She concluded to a weighted average rental rate of \$13.03 per square foot as market rent for the subject. Gross annual potential rent was estimated at \$1,039,860. (Exhibit 1-2, pgs. 87-88.)

Stabilized occupancy was projected at 90% based on data from three competitive properties that were no longer in lease-up. The subject was not operating at a stabilized occupancy rate as of the date of value. A deduction of 10% for vacancy and an additional 2% for credit loss was taken against potential rental income. A deduction of \$124,783 for vacancy and collection loss resulted in effective gross income of \$915,077. (Exhibit 1-2, pgs. 88-89, 91.)

Petitioner's witness estimated expenses for the subject at \$3.25 per square foot (excluding taxes) survey data. Expenses of \$258,905 were deducted, resulting in net operating income (NOI) of \$656,172 or \$8.23 per square foot. (Exhibit 1-2, pgs. 90-91.)

Ms. Ballou considered capitalization rates based on actual sales and three investor surveys, which were analyzed against the subject's strengths and weaknesses. Strengths of the subject included the high quality of construction. Weaknesses included the over-supplied trade area; the "fair" trade area demographics in terms of population, income, and home-ownership; risk of potential new construction; and competition from three storage facilities in close proximity. She concluded to a stabilized capitalization rate of 6.25% for the subject, then added the tax rate, which resulted in a tax loaded capitalization rate of 9.61%. Petitioner's income approach indicated a stabilized value of \$6,830,000, rounded. (Exhibit 1-2, pgs. 91-94.)

As the subject was new construction and stabilized as of the date of value, Ms. Ballou calculated the lost rent attributed to a three-year absorption period required to reach stabilized occupancy. A deduction of \$1,410,000 was calculated as the loss in value attributed to the low occupancy at the date of value. (Exhibit 1-2, pg. 95.) Ms. Ballou's income approach indicated a value of \$5,420,000.

Conversely, the Board was not persuaded by the conclusion of value based on the income approach presented by Ms. Sanchez, an appraiser unlicensed in the state of Colorado. In part, this was because Ms. Sanchez relied on rental data from four un-identified self-storage facilities located throughout Arapahoe County. As the data was labeled as confidential, the Board was unable to determine from the documentary or testimonial evidence whether the comparable rental properties offered: 1) similar locational characteristics; 2) similar unit numbers or sizes; or 3) similar quality, age, or condition. Ms. Sanchez reportedly placed greater weight on rental surveys for the Denver metro area, derived from a variety of sources. (Exhibit A-2, pgs. 54-58.) The Board finds Respondent's market-wide rent survey data significantly less reliable compared to Petitioner's use of rent data from the immediate most competitive properties.

Like Ms. Ballou, Ms. Sanchez deducted vacancy and credit loss equal to 12%. Further, the deduction for expenses was similar. (Exhibit A-2, pgs. 72-79.) Her capitalization rate was derived from sales and investor surveys, with insufficient analysis given to the risks associated with the subject in her conclusion of a 5.25% rate at the low end of the range. Ms. Sanchez's deduction for absorption was higher, at \$1,600,000.

IV. Cost and Sales Comparison Approaches

While both parties prepared cost and sales comparison approaches, the Board finds the income approach to provide the most reliable indication of value for self-storage facilities due to their income producing quality. The Board does not place weight on the cost and sales comparison approaches beyond the fact that both supported the income approaches provided by each party.

V. Reconciliation

The Board finds the conclusions reached within Petitioner's income approach credible. Ms.

Jessica M. Ballou, MAI and Colorado Certified General Appraiser, provided a site-specific income analysis of the subject. The Board found the testimony presented by Ms. Ballou, a licensed appraiser, more credible. Most importantly, she performed a more site-specific appraisal, basing her income projections on data from four competitive properties. Ms. Ballou considered data from the regional market and national surveys to determine a reasonable deduction for expenses. She weighed capitalization rate data against the specific strengths and weaknesses of the subject, concluding to a reasonable capitalization rate of 6.25%. Ms. Ballou's income approach indicated a value of \$5,420,000. She reportedly gave some weight to the sales comparison approach, which indicated a value of \$5,590,000. In the final reconciliation, she concluded to a value of \$5,500,000.

Based on the findings and conclusions presented, the Board finds that Petitioner presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax years 2019 and 2020.

ORDER

The petition is **GRANTED**. The Board finds that Petitioner has met its burden of proving that the 2019 and 2020 taxable value of the property is incorrect. Respondent is ordered to reduce the 2019 actual value of the subject property to \$5,500,000.

The Arapahoe County Assessor is directed to change his/her 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.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

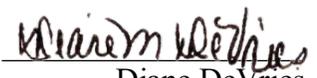
DATED and MAILED this 15th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

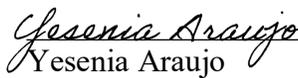

Sondra W. Mercier

Concurring Board Member:


Diane DeVries
*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.


Yesenia Araujo