

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 76610</b>
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Petitioner:

**DURANGO LODGING LLC,**

v.

Respondent:

**LA PLATA COUNTY BOARD OF EQUALIZATION.**

**FINAL AGENCY ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on August 18, 2020, Gregg Near and Diane M. DeVries presiding. Petitioner was represented by Thomas E. Downey Jr., Esq. Respondent was represented by Kathleen Moore, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibit 1 through 9 and Respondent’s Exhibit A through E, along with Respondent’s Addendum 10 (titled “Holiday Inn Value Rushmore Method”) and Addendum 11 (titled “Holiday Inn Value”).

**DESCRIPTION OF THE SUBJECT PROPERTY**

21636 US Hwy 160  
Durango, CO  
La Plata County Schedule No.: 5665-304-00-174

The subject property is owned by Durango Lodging LLC. Durango Lodging LLC operates the property as a Holiday Inn and Suites, per the terms of a license agreement. The subject property is a 4-story, full service hotel containing 116 rooms, including a business center, fitness center, indoor pool, restaurant, guest rooms and suites. The subject property’s actual value, as assigned by the County Board of Equalization (“CBOE”) below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$11,051,980
Respondent's Recommended Value:	\$11,051,980
Petitioner's Requested Value:	\$8,685,740
Board's Concluded Value:	\$8,685,740

### **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 or County Board of Equalization'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 county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id.* However, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S.

### **APPLICABLE LAW**

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.

The Cost Approach involves estimating the cost of replacing the improvements to the property, less accrued depreciation. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo. 1990). Colorado law mandates that depreciation in the valuation of a taxpayer's personal business property be allowed annually from the base year to the date of assessment. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

The Income Approach is a common method for calculating the value of commercial properties, especially apartment buildings, office buildings and shopping centers. *Sonnenberg*, 797 P.2d at 31. 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.*

### **THE BOARD'S FINDINGS AND CONCLUSIONS**

The Board determines the primary issues to be:

1. The appropriate approach(s) to value in determining market (actual) value.
2. Selection, analysis and adjustments to the comparable properties relied upon in the determination of value.
3. Selection of the appropriate units of value.

#### **Market Approach**

Petitioner's witness, Brian Floyd, a Senior Residential Appraiser, presented a Sales Comparison (Market) Approach with five comparable sales ranging in sale price from \$2,750,000 to \$8,400,000 and in size from 11,238 to 50,483 square feet. Adjustments were applied for time (market conditions), location, size (number of rooms), access/exposure, amenities and age/condition. After adjustments were made, the sales ranged in unit value from \$53,942 to \$118,776 per room. The witness concluded to a unit value of \$85,000 per room and a value opinion of \$9,860,000 under this approach. He used this approach as a test of reasonableness.

Respondent's witness, Carrie Woodson, the La Plata County Assessor, presented a Sales Comparison Approach with three comparable sales ranging in sale price from \$2,200,000 to \$4,382,500 and in size from 16,347 to 28,142 square feet. Four additional comparable sales were identified but were not analyzed in the report. Adjustments were made for size, quality and age. After adjustments the sales ranged in unit value from \$170.63 to \$287.89 per square foot of building area. The witness concluded to a unit value of \$206.03 and a value opinion of \$16,104,541.

The Board finds Respondent's Sales Comparison Report to be significantly flawed. Insufficient probative evidence was presented to convince the Board that Ms. Woodson concluded to a supportable value opinion by this approach.

Respondent's Sales Comparison Approach is flawed by incorrect and inconsistent adjustments; application of an inappropriate unit of measurement; an incorrect sequence of adjustments; and inadequate selection of comparable sales.

- The witness incorrectly adjusted the comparable sales for size. By adjusting the smaller sales in an upward manner the size adjustment fails to recognize the law of diminishing

returns. As described in the Appraisal Institute Dictionary, volume 5, page 115 this process violates the “law of decreasing returns”.

- The size adjustments utilized are inconsistent. Sale No. 1, the largest comparable at 28,142 square feet, is adjusted upward by 20%. Sale No. 2, at 17,951 square feet, is adjusted upward 25% as well but, illogically, Sale No. 3 at 16,437 square feet is adjusted upward only 5%.
- Respondent's use of a per square foot value was a questionable methodology as applied to this property type. Hotel and motel properties are typically valued on a price per guest room. (Appraisal of Real Estate, Volume 14, page 386.) Use of an inappropriate unit of measurement can result in an incorrect value estimate.
- The witness incorrectly applied the sequence of measurements. Adjustments of property characteristics, unlike the transactional adjustments, are applied in a sequential manner. (Appraisal of Real Estate, Volume 14, page 391, and illustrated on Table 18.3 page 393.)
- Respondent's witness limited the comparable sales considered to only three properties ranging in size from 16,437 to 28,142 square feet. The largest sale considered by the witness is more than 2.5 times smaller than the subject. Such large variations in the comparables can result in questionable conclusions.

### **Income Approach**

Petitioner's witness presented an Income Approach to derive a value of \$8,990,000 for the subject property. Mr. Floyd considered the data presented in the Sales Comparison Approach; the historical operation of the subject; research of similar hotel properties within the market area and consideration of published data sources. The witness then developed an opinion of the appropriate allowances for vacancy, collection loss and operating expenses concluding to an occupancy rate of 63% and an Average Daily Rental (ADR) of \$125.00 per room. Based on the above Mr. Floyd determined a Net Operating Income (NOI) of \$993,680. The witness then researched the market to develop an opinion of the appropriate Capitalization Rate (Cap Rate) determining a rate of 10%. The Cap Rate was further adjusted by adding 1.3% to reflect the estimated property taxes. Application of the adjusted Cap Rate of 11.3% to the NOI produced a value indication by the Income Approach of \$8,990,000 (rounded).

Respondent's witness presented an Income Approach to derive a value of \$10,894,704.73 for the subject property. Ms. Woodson considered the financial information provided by the hotel operator and determined an NOI of \$1,147,002.46. To establish the Cap Rate, the witness relied upon published information and data provided for La Plata County area 207. On this basis, Ms. Woodson concluded a rate of 10.18%. Application of the Cap Rate to the NOI produced a value indication by the Income Approach of \$10,894,704.73.

The Board finds Respondent's Income Approach to have provided insufficient probative evidence to convince the Board that Ms. Woodson determined a defensible value opinion by this approach.

The Board finds the witness relied only upon the information presented by the subject hotel. The information presented by the witness is incomplete, as is evidenced by comparison of the revenue estimates presented in Addendum 10 and Addendum 11.

- The Income Approach as presented by the witness is not an analysis of the market, it is simply an analysis of the operations of one hotel.
- Inadequate research was undertaken to verify Respondent's income statement, vacancy and expenses to be representative of the wider market.
- No first-hand information was presented for the Cap Rate utilized in the report. The witness relied upon second-hand published reports and a rate developed by the county. No analysis was provided to support the Cap Rate applied by the larger market, of which the subject property is clearly a part.
- The witness provided two estimates of the final value. The first, presented on page 49 of the appraisal report (Exhibit A) indicates a value of \$11,051,980, and the second, presented within Addendum 11, a value of \$9,598,497 (a difference of \$1,453,438). No explanation was provided explaining which value opinion is superior, although Ms. Woodson opined the Addendum 11 value was "low."
- Addendum 11 considers Reserves for Replacement, although Ms. Woodson did not consider these reserves in her appraisal report. This factor is significant to investors in income-producing real estate. Failure to include this item results in a likely over valuation.

### **Cost Approach**

Petitioner's appraiser considered, but did not conduct, a Cost Approach. Petitioner's appraiser testified that he determined the Cost Approach would not produce a reliable indication of value, given that the property is 8 years old, and that an investor in a hotel property would not consider the Cost Approach in making a purchase decision. He testified hotel properties are typically valued using an Income Approach to value. Due to the difficulty of determining a supportable depreciation estimate for an older property and Petitioner's statement that buyers do not give this approach appreciable weight, the Board agrees with Petitioner's approach.

Respondent's appraiser conducted a Cost Approach, concluding to a value of \$15,948,822. Land value was determined by presentation of three comparable sales that were not individually adjusted. The land value opinion was determined by adopting the median sales price per square foot of the sales. This median value was then adjusted upward by application of an unsupported cost of existing infrastructure. Improvement costs were valued by reliance upon third party information and a straight line depreciation estimate. The value opinion determined by this

approach, \$15,948,822, exceeded the concluded market value by nearly 31%. Within the final Reconciliation the witness gave this approach “some weight” after noting the approach is less reliable due to the age of the improvements. The Board finds the value indication for the Cost Approach to be insufficiently supported.

Based on the above, the Board finds that the County Board of Equalization’s value was not supported by the evidence presented. Conversely, Petitioner’s value opinion is supportive of the requirements under the Income Approach supported by the sale comparison analysis.

Petitioner presented sufficient probative evidence to prove that the subject property was incorrectly valued for tax year 2019. The Board places more weight on the evidence of Petitioner than on the evidence of Respondent primarily because Petitioner’s value opinion more accurately reflects the actions of market participants. The Board concludes that Petitioner has met its burden of proving that the assigned value for tax year 2019 is incorrect.

### **ORDER**

The petition is **GRANTED**. Respondent is ordered to reduce the 2019 actual value of the subject property to \$8,685,740. The La Plata 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.

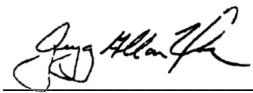
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

*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 4<sup>th</sup> day of February 2021.

**BOARD OF ASSESSMENT APPEALS:**

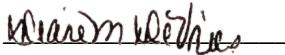
Drafting Board Member:



\_\_\_\_\_  
Gregg Near



Concurring Board Member:



\_\_\_\_\_  
Diane M. 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 order of the Board of Assessment Appeals.



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Yesenia Araujo