

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket Nos.: 77240 & 2020BAA402
Petitioner: GENOA WAY LLC, v. Respondent: DOUGLAS COUNTY BOARD OF EQUALIZATION.	
FINAL AGENCY ORDER	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on April 6, 2021, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by David M. McClain, Esq. Respondent was represented by Carmen N. Jackson-Brown, Esq. Petitioner protests the actual value of the subject property for tax years 2019 and 2020.

EXHIBITS

The Board admitted into evidence Petitioner’s Exhibits 1 and Rebuttal 2; and Respondent’s Exhibits A and Rebuttal B.

STIPULATED FACTS and PROCEDURAL MATTERS

Prior to the hearing, off the record but after the Board had convened, the parties agreed to consolidate Dockets 79416 (tax years 2017 and 2018), and 77240 (tax year 2019) for the purpose of this hearing. Petitioner further requested that Docket 2020BAA402 (tax year 2020) also be consolidated for the purpose of this hearing as part of the discussion of preliminary issues and Respondent did not object. The dockets all pertain to the same real property. The Board will issue a decision for Docket 79416, and one decision for the combined Dockets 77240 and 2020BAA402.

DESCRIPTION OF THE SUBJECT PROPERTY

Address: 675 Genoa Way, Castle Rock, Colorado
Douglas County Account No.: R0402466

The subject property is a free-standing, 27,395 square foot discount store building constructed in 2004, situated on a 2.94-acre site. The property is located on the south side of

Meadows Parkway, directly south and southeast of the Promenade at Castle Rock and Outlets at Castle Rock retail developments, on the west side of I-25 in the town of Castle Rock. Meadows Parkway has an interchange with I-25 and is the major access route from I-25 to these large retail centers. The subject property is close to the I-25/Meadows Parkway interchange. The property has a 12-year triple net lease to Bubbles Liquor World that started in May 2015 with a renewal option at market rent.

The appealed value assigned by the County Board of Equalization (“CBOE”), the parties’ assertions of the subject property’s value, and the Board of Assessment Appeals’ concluded value are as follows:

Appealed CBOE Value:	\$6,848,750
Petitioner’s Requested Value:	\$3,350,000
Respondent’s Requested Value:	\$6,800,000
BAA’s Concluded Value:	\$6,800,000

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 or CBOE’s valuation or classification 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, in this appeal, 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. (2021).

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.*

FINDINGS AND CONCLUSIONS

Petitioner claims Respondent did not consider the inferior location of the property south of Meadows Parkway in an industrial area; that the site is below grade so has inferior visibility; or that the subject building has low grade interior finishes and poor lighting.

Respondent claims that although the subject site is partially lower in elevation relative to Meadows Parkway, the building is still visible and has prominent signage with good visibility from the Meadows Parkway major arterial. Further, the subject property is visible from the I-25 off-ramp. Respondent claims mixed uses in the immediate vicinity of the subject include restaurants, a bank, office, a hotel, and other retail uses, and that it is not simply an industrial area. Although the property is not within one of the retail developments north of Meadows Parkway, it is adjacent to the major arterial providing access to the retail developments and Meadows Parkway carries approximately 50,000 vehicles per day providing good exposure for the subject property.

The Board finds that Petitioner has failed to support its claim that the interior finishes and lighting in the subject building are so inferior that those features adversely impacted the marketability of the property in any way. The Board finds Petitioner's witness's opinion regarding the deficiencies of the property insufficient evidentiary support of that claim. The Board finds Respondent's photograph and testimony evidence persuasive that although the subject building is partially below the level of Meadows Parkway, it is tall enough to have some visibility from that arterial, and is visible from the I-25 off-ramp.

I. Cost Approach

Neither Petitioner nor Respondent presented a cost approach analysis for this property, agreeing it would not produce a reliable estimate of value due to the age of the improvements. Both parties developed the market and income approaches to value.

II. Market Approach

The Board finds that both parties acknowledged there was a sale of the subject property in March 2016 but neither relied on that sale because it reportedly included business value and Petitioner's witness and Respondent were unable to obtain the detailed information necessary for the real property component of the sale price to be adequately extracted.

Petitioner presented expert testimony by Mr. Todd J. Stevens of Stevens and Associates who presented a consulting report and market value estimate for the subject property. Mr. Stevens presented the sales of three retail properties ranging in size from 25,162 to 43,719 square feet and in unadjusted price per building square foot from \$62.90 to \$235.32. Without applying market adjustments to the sales, the witness concluded to a value for the subject by this method of \$135.00 per square foot and a total value of \$3,698,325.

The Board finds that Petitioner's market approach lacks sufficient evidence to persuade the Board it provides a reliable indication of value for the subject property. Sale 2 is 20 years older than the subject building; and sale 3 is in-line retail space, not a free-standing building. Also, the sales have an unusually wide range in prices. The Board finds that by not applying market adjustments to the sales for changing market conditions (time), or characteristics including, but not limited to, location, building size, age, or condition, Mr. Stevens did not adequately develop the market approach to value. Therefore, the Board concludes that Petitioner's market approach does not produce a credible indication of value.

Equalization, which is the act of raising or lowering the total valuation placed on a class or subclass of property within a designated territorial limit, does not account for the specific attributes of individual properties and, thus, is not a proper valuation method for an individual property. The assessor's valuation of similar property similarly situated may be considered to be credible evidence, admissible to assist the Board in deciding issues before it. § 39-8-108(5)(b), C.R.S. The Board may consider an equalization argument as support for the value of the subject property once the subject property's value has been established using a market approach, and if evidence or testimony is presented which shows the Board that the assigned values of the equalization comparables were correctly valued, by application of the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14 (Colo. 1997). However, Petitioner presented no evidence that showed the Board that the equalization comparables were correctly valued. As a result, the Board gave no weight to Petitioner's equalization argument.

Respondent presented expert testimony by Mr. Carlos U. Diaz, MAI, a Certified General Appraiser employed by the Douglas County Assessor's Office. Mr. Diaz presented four comparable sales that range in building size from 14,823 to 44,461 square feet and in sale price from \$204.83 to \$272.76 per square foot. The sales were all constructed in 1995 to 2015 and, like the subject, are free-standing buildings. Mr. Diaz presented an adjustment grid using qualitative adjustments rather than quantitative adjustments to each sale for location, age, and other physical characteristics. The appraisal report also included a discussion of the relative characteristics of each sale compared to the subject to explain adjustments. The witness concluded to an indicated value of \$250.00 per square foot for the subject property and a total value by this approach of \$6,848,750.

Based on the similarities as free-standing buildings, and the tighter ranges in age and building sizes of each of these comparable sale properties relative to the subject property, the Board finds that Respondent's sales are appropriately representative of the subject property's value under the market approach. The Board finds the testimony and analysis of Respondent's witness credible because he addressed the appropriate factors to provide support for his value conclusion using the market approach.

III. Income Approach

The subject property is leased to Bubbles Liquor World for 12 years, beginning May 1, 2015. Rent escalations are 2.5% annually, with the annual rent as of the effective date of the 2019/2020 valuation at \$33.41 per square foot, triple net. Respondent found no unusual factors in the lease that would affect the lease rate, which is significantly higher than the lease comparables presented by both parties. Respondent requested information from Petitioner to explain the higher lease rent and if it included any non-realty items but it was not provided. The Board finds that neither party relied on the subject lease in estimating value by the income approach.

Petitioner presented an income approach to derive a value for the subject property. Mr. Stevens presented seven triple net lease and one modified gross rent comparables ranging in rentable area from 17,363 to 61,680 square feet and in rent from \$4.03 to \$13.00. The witness concluded to a rent of \$11.00 per square foot for the subject property. After deducting vacancy and operating expenses, the witness applied a 7.75% rate to capitalize the net operating income into a value of \$3,324,516.

The Board finds that Petitioner's income approach evidence is not probative of the subject property's value because the witness provides inadequate support to convince the Board that his analysis is more accurate than Respondent's. Mr. Stevens' rent comparables are not all free-standing properties such as the subject and the Board finds no consideration given for relative comparability to the subject property for the location of the comparables, the sizes of the leased areas, or the age or condition of the improvements. The lease comparables range from 5 to 30 years older than the subject property. Also, no adjustment was made for the modified gross rent for Comparable 5. Mr. Stevens did not provide any support for the operating expenses deducted from income, identified as common area maintenance (CAM), management, etc. The Board finds that under a triple net lease, the tenant pays for all property expenses. The property owner would expect to incur management expense plus a vacancy and collection loss for periods when the building is not leased. However, the Board finds that Mr. Stevens' deduction for CAM plus "etc.", in addition to management expense, likely overstates the typical on-going expense when considered in conjunction with the vacancy deduction.

The Board further finds the capitalization rate used by Mr. Stevens is higher than the rate indicators for this type of retail property in the Denver metropolitan area presented in the Summer 2018 Burbach & Associates, Inc. Real Estate Investment Survey for the West/Central United States (Burbach Survey), presented in Petitioner's rebuttal. Mr. Stevens relied on the opinion survey rate indicators given by market participants for the metropolitan area as well as the larger West/Central United States locations to support his higher capitalization rate conclusion for the subject property. The Board does not find that conclusion persuasive because the survey rates for the larger regional

area include much higher rates for some other geographic areas than the Denver metropolitan area indicators. For Mr. Stevens to argue that an appropriate rate for the subject should be based on the larger regional area because the market for this type of property is national, not just local, the Board finds the ranges in rates between the metropolitan area indicators and the regional indicators should be much closer, which is not the case here. The Board further finds that national investor expectations would be reflected in the capitalization rates produced by Denver metropolitan area sales as well as in the metropolitan area indicators reported in the Burbach survey. The Board finds that Petitioner's higher operating expenses and higher capitalization rate both result in a lower value for the property. The Board concludes Petitioner's requested value is not supported by the consulting analysis presented.

The Board concurs with Petitioner that it is not required to prove a different value than assigned by Respondent. Therefore, the Board has also considered the individual key components to value presented by Petitioner's witness to determine if persuasive evidence was presented to convince the Board that one or more individual components of Respondent's valuation analysis is not credible. The Board concludes that Petitioner has failed to present credible evidence to prove that any particular aspect of Respondent's value is flawed or unreasonable.

Respondent's witness, Mr. Diaz, presented five lease comparables including two in Castle Rock that are labeled "confidential" because the information was taken from confidential property owner provided data. The only location information provided for those comparables is the city they are in. The Board gives little weight to those confidential lease comparables because the Board has insufficient information to confirm that the properties are, in fact, comparable to the subject.

The remaining three leases range in leased square footage from 15,000 to 57,359. The triple net lease rents range from \$14.99 to \$26.58 per square foot. Mr. Diaz presented a lease comparison grid analysis in which he applied qualitative ratings to each property as inferior or superior to the subject for access, leased area, and condition/age of the improvements. Based on the ratings, the witness concluded that the rent for the subject property should be greater than or less than the lease rate shown for each comparable. Using that method, Mr. Diaz concluded to a market rent for the subject of \$19.00 per leased square foot. Mr. Diaz testified he requested profit and loss summaries for the subject property from Petitioner for the applicable base period but they were not provided. After deducting estimated vacancy and operating expenses, the witness applied a 7.0% rate to capitalize the net operating income into a value of \$6,710,000 by the income approach.

The Board finds that Respondent's 7.0% capitalization rate is well within the range of survey rates for freestanding retail reported by market participants for the Denver metropolitan area in the Summer 2018 Burbach Survey. The 7.0% rate is above the mean and median rates indicated which results in a lower value indication for the property that benefits Petitioner. The Board finds the other source evidence presented provides good support for Respondent's analysis and conclusion of value.

Based on the more detailed evidence and discussion of each component contributing to the value, the Board concludes that Respondent's evidence credibly reflects the subject property's value under the income approach.

Petitioner presented insufficient probative evidence to prove that the subject property was incorrectly valued for tax years 2019 and 2020. The Board places more weight on the evidence of Respondent's witness than on the evidence of Petitioner's witness, primarily because Respondent's evidence was more similar to the subject property, the appraisal analysis included market adjustments, and was overall better supported. However, in preparing a property specific appraisal for the subject property for this hearing, Respondent concluded to a lower value than was assigned by the CBOE and requested the value be reduced to \$6,800,000 for tax years 2019 and 2020. The Board agrees.

ORDER

The petition is **GRANTED**. The Douglas County Assessor's Office is directed to update 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.

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 1st day of June 2021.

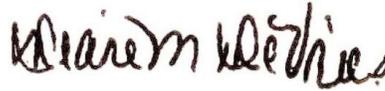
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Louesa Maricle

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.



Casie Stokes