



Petitioner's Requested Value: \$2,250,000  
Respondent's Recommended Value: \$2,785,500

### **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 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, 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. (2019), 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**

The Board recognizes that it is unusual for dentists to fully own and occupy a multi-story building of this size, making it difficult to find adequate comparable data to support a market value conclusion. It finds that Petitioner's market approach evidence, including five unadjusted comparable sales ranging from 11,776 to 28,631 SF and \$70.45 to \$130.14 PSF, to be probative evidence of the subject property's value because Sales 1, 2, 3 and 5 had dental and medical tenants, and a law firm acquired Sale 4 (located nearby to the subject) for owner occupancy .

By comparison, Respondent's four sales, that range in unadjusted unit price from \$116 to \$262 PSF, included only one medical building – a property located at 5840 E. Evans Ave and designated as Respondent's Sale 1 and Petitioner's Sale 4. However, after adjustment of the sale price of this medical building comparable to \$2,346,077, Respondent gave that sale most weight in reaching their estimate of value, which we consider appropriately representative of the subject property's value under the market approach. This value is also supported by Respondent's Sale 2, which at an adjusted price of \$2,349,250 reported net income at the time of sale within 7% of what Petitioner expected.

The Board notes that Respondent favored quantitative adjustment and Petitioner used qualitative adjustment, but both parties failed to make the substantial adjustments called for where comparable sales of the leased fee interest are used to value the fee simple interest.

Both parties selected comparable rental data to support their conclusion of market rent as part of their respective income approaches to value. Again, Petitioner relied exclusively on findings for medical buildings in their appraiser's survey, while Respondent listed only high-rise multi-tenant office buildings, most of which were located in the Denver Tech Center.

Based on claims that actual expenses supplied by Petitioner were "padded," the Respondent's appraiser reported that the Assessor's office does not take into account (among other items) professional management fees, grounds maintenance and janitorial expenses. He cited unidentified brokers who were interviewed to reach an estimate of expenses of \$5.90 PSF. Based on our concerns over his other data collection efforts and that only some costs of operation were accounted for, the Board was not persuaded that his expense estimate reflects what medical building owners actually face. Indeed, Petitioner's witness produced a detailed summary of actual repair and maintenance expenditures over the last three years for the subject property that alone accounted for almost half of the operating expenses (less taxes), and supported the reasonableness of Petitioner's expense estimate.

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. The taxable value of the subject property shall be reduced to \$2,250,000 for tax year 2019. The Assessor of the City and County of Denver is ordered 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 16<sup>th</sup> day of October, 2020.

## **BOARD OF ASSESSMENT APPEALS**

Drafting Board Member:



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John DeRungs

Concurring Board Member:



Debra 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 order of the  
Board of Assessment Appeals.



Casie Stokes