

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 78841</b>
Petitioner:  <b>DENVER WEST LLC,</b>  Respondent:  <b>JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on February 3, 2021, Diane DeVries and John DeRungs presiding. Petitioner Denver West LLC was represented by Richard G. Olona, Esq. of Olona & Associates P. C. Respondent was represented by Rebecca Klymkowsky Esq. of the Jefferson County Attorney’s office. Petitioner seeks an abatement or refund in this appeal of the actual value of the subject properties for tax year 2018.

**EXHIBITS AND EXPERT WITNESSES**

The Board admitted into evidence Petitioner’s Exhibits 1, 2 and Rebuttal Exhibits 1-6, and Respondent’s Exhibits A, A-1 and Rebuttal Exhibit B. Aaron Anderson of Real Analytic Advisors appeared as an expert witness for Petitioner. Robert Sayer appeared as an expert witness for the BOCC.

**DESCRIPTION OF THE SUBJECT PROPERTY**

Within this appeal, Petitioner appeals the value of two separate but commonly owned properties – a property addressed 14103 Denver West Parkway, located in Golden Colorado and assigned schedule number 300424481, and a neighboring property addressed 14123 Denver West Parkway and assigned schedule number 300424482. Together, these properties form an office complex of two low-rise buildings in the Denver West Office Park, located near the interchange of Highway I-70 and Colfax Avenue.

Constructed in 1994, 14103 Denver West Parkway is 4.8 acres improved with a two-story building with 62,958-SF of net rentable area and over 300 parking spaces. It had been occupied by Boston Market since 1996 on a long term lease which was scheduled to end in mid-2019.

To the south is 14123 Denver West Parkway, which is 4.8 acres improved with a three-story building of 88,161-SF of net rentable area and 373 parking spaces. It was built in 1996. A single tenant, Safeco/Liberty Mutual, had fully leased the building since 2000, but a 2015 lease amendment was due to free up nearly half of the building two months after the effective value date.

The appealed values assigned by the County Board of County Commissioners (“BOCC”) below, the parties’ assertions of the subject properties’ value, and the Board of Assessment Appeals’ concluded values are as follows:

**14103 Denver West Parkway (Sch. No. 300424481)**

Appealed BOCC Value:	\$ 8,106,800
Petitioner’s Requested Value:	\$ 6,000,000
Respondent’s Requested Value:	\$ 8,106,800
BAA’s Concluded Value:	\$ 6,000,000

**14123 Denver West Parkway (Sch. No. 300424482)**

Appealed BOCC Value:	\$11,933,700
Petitioner’s Requested Value:	\$ 7,200,000
Respondent’s Requested Value:	\$ 9,600,000
BAA’s Concluded Value:	\$ 7,200,000

**Combined Subject Properties**

Appealed BOCC Value:	\$20,040,500
Petitioner’s Requested Value:	\$13,200,000
Respondent’s Requested Value:	\$17,706,800
BAA’s Concluded Value:	\$13,200,000

**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 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 BOE*, 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 proceeding below 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 BOCC. § 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 presented the testimony and appraisal reports of appraiser Aaron Anderson. Respondent presented the testimony and appraisal reports of appraiser Robert Sayer.

The Board finds that Petitioner’s market approach evidence, including adjusted comparable sales ranging from 29,761 to 76,580 SF, is better supported by adjustments – particularly for time and location. Indicated ranges are from \$99 to \$114 PSF for 14103 Denver West Parkway, and \$104 to \$106 PSF for 14123 Denver West Parkway. By comparison, indications from Respondent’s sales ranged from \$100.16 to \$177.80 PSF for 14103 Denver West Parkway, and from \$88.06 to \$112.86 PSF for 14123 Denver West Parkway. For 14123 Denver West Parkway Respondent’s comparable building sizes ranged from 39,936 to over 150,000 SF, producing a comparatively wide range of unit prices.

Both parties selected four different comparable rental properties to support their conclusion of market rent as part of their respective income approaches to value. But Petitioner’s findings

were better supported using strictly new leases of more comparably large (over 25,000-SF) blocks of space within the statutory data gathering period. The Respondent relied on only long-term leases, some of which had been agreed to years before the effective date of value. In addition, the leases were of space, in half of those comparable buildings, that was much smaller than the subject properties', at under 10,000-SF, compared to the subjects' 62,958-SF and 88,161-SF.

By using CoStar data presented in the market analysis section, a strong case was also made for the Petitioner's estimate of vacancy and collection loss at 11%. Respondent's use of a standard "frictional vacancy" of 5% was less persuasive. Finally, the Respondent came to a somewhat higher operating expense for the property, but the appraisers' loaded capitalization rates were only half a percent apart. Overall, that led the Board to find Petitioner's estimate using the Income Approach to be more reasonable, and the Board puts great weight on Petitioner's Income Approach analysis and value conclusion.

By supplying more reliable building sales and rental comparable data and better-supported adjustments, the Board concludes that Petitioner has met its burden of proving that the assigned value for tax year 2018 is incorrect for both properties at issue in this appeal. The Board finds that the evidence shows the correct value for 14103 Denver West Parkway (schedule no. 300424481) for tax year 2018 is \$6,000,000, and the correct value for 14123 Denver West Parkway (schedule no. 300424482) for tax year 2018 is \$7,200,000.

### **ORDER**

The petition is **GRANTED**. The Jefferson County Assessor's Office is ordered 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 23rd day of June, 2021.

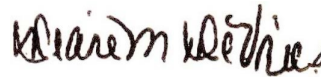
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



John F. DeRungs

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