


<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FIFTH STREET-DENVER CENTER LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Leslie A. Fields Address: 370 Seventeenth Street, Suite 2500 Denver, Colorado 80202-4004 Phone Number: (303)592-9000 Attorney Reg. No.: 11232</p>	<p>Docket Number: 37609</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 19 and 21, 2001, Karen E. Hart, Debra A. Baumbach, Mark R. Linné presiding. Petitioner was represented by Leslie A. Fields, Esq. Respondent was represented by Eugene J. Kottenstette, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

HC BROWNS ADD 02349 B30 L16-20 & W/2 VAC ALY ADJ & L21-30 & E/2 VAC ALY ADJ & BEG 101.83FT W OF SE COR L31 N .06FT NE 4.25FT NW 8.76FT W 24.65FT S 7.77FT E 31.17FT TO POB (Denver County Schedule No. 02349-33-028-000)

Petitioner is protesting the 2000 actual value of the subject property, a 51-story high-rise office building, comprising a total of 1,312,939 square feet. The improvements are situated on a site containing a total of 50,260 square feet zoned B-5, and were constructed in 1982.

ISSUES:

Petitioner:

Petitioner contends that though the property is considered a trophy office building, there are operational problems and deficiencies in the building as a result of a previous owner who kept operating expenses deliberately low in order to maintain occupancy. The property has between \$4 and \$4.5 million in deferred maintenance due to the lack of upkeep. The location, on the eastern fringe of the Denver Central Business District (CBD), is not commensurate with other CBD offices. The cost approach is not meaningful in valuing the subject, and the comparable sales utilized by the Respondent are also not appropriate. The only approach of relevance is the income approach. The assessor has allowed the image of the property to dictate its value.

Respondent:

The state requires the use of three approaches to value, if applicable. The Colorado Constitution has incorporated the approaches, thus demonstrating their importance. While the condition as of January 1, 2000 can be considered, there is written testimony that demonstrates that the economy was improving during this time period. Respondent contends that the property has been properly valued using the cost, direct sales, and income approaches to value. The concluded value is well supported, based on a consideration of the three approaches to value. The appraisal submitted supports the valuation assigned.

FINDINGS OF FACT:

1. Petitioner made a Request to Amend the Name on the Petition to Fifth Street-Denver LLC., and the Board granted that request due to testimony of a clerical error.
2. Petitioner's witness, William Fleming-Owen, General Manager for Commonwealth Partners, testified that he has been working in office management business since 1985. Mr. Fleming-Owen indicated that his previous experience included the position of property manager for Mile High Properties, as well as employment with Vantex Properties.
3. The witness described the subject as a 51-story (51st level is mechanical) office building with 3 subterranean floors. There is no parking on site, but there is parking on an adjacent site with a different schedule number; it is, therefore, considered part of the property.
4. The witness testified that he has responsibility for the general management of all operations pertaining to the property, including leasing, management, and physical maintenance. He has gained insight into the condition of the property as part of his duties. The overall condition of the building is different from what can be seen from an exterior view. He felt the building has been abused; aesthetic conditions were poor; a tremendous amount of work needed to be done. The condition of the building was poor due to the previous management.

5. Mr. Fleming-Owen testified that a deferred maintenance document was prepared to summarize the items needed to be repaired; these items and recommendations were discovered once he was hired, the listing of which was presented as Petitioner's Exhibit #7. The witness testified that these items included numerous items throughout the building, including problems with leaking, ice falling to the street below, and mechanical items with the elevators. In addition, the condition of the lobby was determined to be dated; dark, insufficient lighting; insufficient signage; the lobby was inconsistent with a building of this stature. There were also several ADA compliance issues: one of the biggest issues was the non-compliance of the building, specifically not having Braille on signage; no audible indicators in elevators; no visible indicators for many areas; faucet handles in bathroom; proximity devices in elevators were not available. No direct path of entry into the building for disabled individuals. Exterior windows: had not been cleaned for an extended period; this impacts the entire exterior of the building; industry standard is 3-4 times per year.

6. In addition to the deferred maintenance/future expenditure summary, the witness testified with respect to a due diligence document compiled by a number of experts, and presented as Petitioner's Exhibit #8. This document provided some of the cost basis for the summary document prepared by Mr. Fleming-Owens. The subject has never had an audit such as was performed as part of the due diligence process. This was the first comprehensive analysis of the subject and its physical condition.

7. The witness testified that the location of the Wells Fargo Center vis-à-vis the majority of the Central Business District (CBD) constitutes a psychological barrier in the minds of tenants. Many potential tenants have indicated that they feel that the subject is too far from the things they want to be near in the downtown area. Tenants have also indicated that aesthetic issues have been of concern in the decision to stay within the building.

8. The witness testified that 500,000 plus/minus square feet of the building is occupied by Wells Fargo Bank. Most of the space is utilized by the bank for processing and administrative uses. Much of this space consists of wide-open spaces, metal doors, and a lower quality office space environment. Only a small portion of the space is finished as executive offices.

9. The witness testified under cross-examination that the purchaser was unaware of a number of items, including replacement of soap dispensers, ADA compliance issues, condition of building risers, condition of bathrooms and lobby condition, when they purchased the subject property.

10. The witness admitted through his testimony that some of the expenses detailed on the cost summary are applicable to another parcel that is not part of this appeal, on which a garage is located.

11. The witness admitted in his testimony that the subject property was able to obtain virtual 100% occupancy, despite having items of deferred maintenance.

12. The witness testified that while certain issues were addressed immediately, due to health and safety concerns some of the items had to be delayed due to the fact there were so many items to be corrected. The witness further indicated that if he could address all of the issues of consideration, he would have one of the best buildings in the Denver area.

13. The witness testified that there were only two buildings in the class of his property, the subject and Republic Plaza. There are several other properties that come close, specifically 17th Street Plaza and Tabor Center.

14. The witness testified that though he could make the subject the best building in the Central Business District, and that this might require \$8,000,000.00 or \$9,000,000.00, he could not state if this expenditure would result in a property that would be worth \$180,000,000.00.

15. Under redirect examination, the witness testified that the subject was located approximately 2 ½ blocks from Republic Plaza.

16. Under recross-examination, the witness admitted that there was an umbilical connection from Broadway to the subject.

17. The witness testified in response to questions from the Board that there were service contracts in place for many of the building systems, but areas of disagreement often occur with respect to who has the liability to perform under the terms of the contract.

18. The witness testified that they attempted to get the contractor to correct the safety issues. There was often disagreement. The witness indicated that litigation would be considered under these circumstances, and the owner would expend the necessary funds and then attempt to recover the costs from the service provider.

19. Mr. Fleming-Owen testified that the subject was 98% occupied during the base period.

20. The witness testified that many of the expenses could be charged back to the tenants; and in reference to an example of paver repairs, testified that if similar materials were used, the tenants could be charged for these repairs.

21. The witness testified that all safety and life-threatening issues have been addressed by the ownership at the present time.

22. Petitioner's witness, Mr. Timothy A. Green, Property Tax Consultant for TAG Real Estate Services, presented the following indicator of value:

Income: \$91,500,000.00

23. Petitioner's witness did not present a cost approach to derive a market-adjusted cost value for the subject property, nor did he apply a direct sales comparison analysis.

24. Based on the income approach, Petitioner's witness presented an indicated value of \$91,500,000.00 for the subject property.

25. The witness testified that he was well versed with buildings in the Central Business District, and that he had worked with the previous property manager, and was familiar with the condition of the subject over the last several years.

26. Mr. Green testified that there has been a demographic shift in the vicinity of the subject, and that the most critical consideration in the valuation of real estate is location. Other properties, such as Republic Plaza, have been more appropriately situated with respect to development and demographic factors in the Central Business District. Location is the preeminent factor in a property's ability to generate rental income.

27. The witness testified that he had numerous occasions to visit the property; including common areas and floors on which clients were located. He indicated that he was shocked at the level and degree of problems associated with the subject when he was contracted to review the subject's value.

28. Mr. Green testified that there was a dramatic difference in the levels of interior quality between the subject property and comparable properties such as Republic Plaza. Republic Plaza has a more consistent level of quality.

29. Mr. Green testified that he was unaware of any other building in the Central Business District in which the majority of the space is used as back-office space. The majority of Wells Fargo's space is processing in nature, and there are no other buildings in which this type of space is present. Mr. Green characterized the space as class C, which is inferior to the general nature and reputation of the building within the greater market.

30. Mr. Green testified that the subject has \$4.4 million in deferred maintenance. He considered the deferred maintenance, and determined what the conversion cost would be to convert single-tenant space to multi-tenant space. He did recognize that the quantification provided in the due diligence analysis conducted by the purchaser contained certain items that he recognized as pertaining to the adjacent parking garage. He only considered those costs directly attributable to the subject.

31. The witness testified that the typical lease basis for properties such as the subject is a gross lease, in which the landlord has the ability to pass expenses on to tenants.

32. Mr. Green testified that the property manager is following his fiduciary responsibilities in minimizing the expenditures in any given years. For this reason, not all of the deferred maintenance has yet been corrected, nor could it be corrected in a given year.

33. Due to his previous experience with the former owner, the witness testified that, based on the data provided to him, the expenses for the subject were far lower than would be typical for buildings of this type. He was baffled at the time with respect to how the previous owner could run the building so inexpensively; but in retrospect, Mr. Green indicated that it is clear that the subject was run in a detrimental fashion, neglecting the ongoing maintenance that should be conducted.

34. The witness testified that the subject lacks a strong location, has historically suffered from poor management, and has poor interior finish. The property is a stunning property visually. There is a presumption on the part of the market that it is going to be similar with respect to its interior finish. Mr. Green testified that this was not the case.

35. The witness testified that the average lease rate for leases executed during the base period was \$16.75 per square foot on a gross lease basis. New leases included significant tenant improvement items that were front-loaded into the lease rate, and which could overstate the rental rate.

36. Mr. Green testified that while he considered the cost approach in valuing the subject, he felt that it was not appropriate to apply this approach in the final valuation.

37. Similarly, the direct sales comparison, or market approach, was considered but not applied. Mr. Green testified that the Denver County Assessor has not applied the direct sales comparison in valuing any downtown office building.

38. Mr. Green testified that he utilized the income approach to derive a value for the subject.

39. The witness testified that the greatest disparity in the two pro-forma analyses presented by the Petitioner and the Respondent was in the rental rate and the expenses. He concluded that the subject is not a trophy property, based on its lack of appropriate interior finish, and the physical conditional problems.

40. Under cross-examination, the witness testified that he took the total recoverable expenses, \$7,086,000.00, and added commissions, capital expenditures, and additionally looked at assessor's information to conclude appropriate expenses.

41. The witness testified that he did include the recoverable portion of the property tax expenses in his expense estimate.

42. Mr. Green testified that the subject property is competitive with class B and class C space in the market.

43. The witness testified that he felt that the sales price of a property was not a definitive indication of market value. Sales of properties of this magnitude are not easily evaluated on the basis of an income stream. Accordingly, the transactions are far more complex than typical; and without sufficient information and insight into the transaction, it is not possible to utilize these sales.

44. Mr. Green testified that the actual value of sales within the direct sales comparison approach is best determined by the income approach to value.

45. Under redirect examination, the witness testified that the Holmes Roberts and Owen space within the subject property was of good quality, while the common areas were less desirable.

46. With respect to the relevance of the asking rates for a given property, the witness testified that the asking rates are based on the condition of the space and the degree of finish. A huge portion of the subject space is not consistent with the asking rate, but is inferior.

47. Petitioner is requesting a 2000 actual value of \$91,500,000.00 for the subject property.

48. Respondent's witness, Mr. Edward J. Pecesky, CAE, ASA, Commercial Appraiser and Colorado Certified General Appraiser with the Assessment Division of the City and County of Denver, testified that he has responsibility with respect to setting initial values as well as values upon appeal. He presented the following indicators of value:

Market:	\$117,856,000.00
Cost:	\$125,911,000.00
Income:	\$112,370,000.00

49. Based on the market approach, Respondent's witness presented an indicated value of \$117,856,000.00 for the subject property.

50. With respect to the direct sales comparison or market approach, the witness testified that he was able to extract four sales from within the greater market. The four sales selected included: 707 - 17th Street, which sold in June 1995 for an indicated price of \$103.44 per square foot after adjustments for location, class, and parking. The second sale, One Civic Center Plaza, located at 1550-60 Broadway, sold in April 1998 for an indicated price of \$103.23 per square foot, after consideration of adjustments for class, size, vacancy and parking. The third sale, Plaza Tower One, located at 6400 South Fiddlers Green Circle, sold for an indicated unit price of \$98.98 after the application of adjustments for location, size, and parking. The fourth sale, Southern Pacific Building, located 1860 Lincoln Street, sold in December 1997, for an indicated sales price of \$199.79 per square foot, after adjustments for location, class, size/single-user design, parking, and vacancy. Based on a consideration for all of the comparable sales, the witness concluded a value of \$100.00 per square foot, which resulted in a value of \$117,856,000.00 from the direct sales comparison or market approach.

51. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$125,911,000.00. With respect to the cost approach to value, the witness testified that he examined land sales, which were detailed within his appraisal analysis, noting that the land value did not appear to be in dispute. The land sales were reasonable considering the relative scarcity of sales in the CBD core. A 15% factor for the deferred maintenance was applied to the cost approach derived from Marshall Valuation. The cost approach conclusion of \$129,911,000.00, less a deduction of \$4,000,000.00, resulted in a value of \$125,911,000.00. The due diligence estimates for replacement cost approximated \$250.00 per square foot, while Marshall Valuation Service numbers are much lower.

52. Respondent's witness used the income approach to derive a value of \$112,370,000.00 for the subject property. The witness testified that the subject property was not managed to market norms. The owners were not taking advantage of huge spikes in rental rates throughout the market. Many involved in the market have long said that this property is not performing the way it should have in the market. The owners of the building have stated that they were looking to maximize the occupancy, rather than achieve maximal rental rates.

53. Mr. Pecesky testified that Norwest is the highest paying tenant in the building, paying a gross rental equivalent of \$21.24 per square foot. This lease was negotiated in the 1980s, and is a below-market lease. Another lease cited was that for Fairfield and Woods. This tenant also did not achieve market levels, but rather had a built-in mechanism for lease escalation. Gulf Resources was above \$20.00 per square foot. All leases include a provision for reimbursement for property taxes. New tenants were coming into tenancy in the building at an average rate of \$18.52 per square foot. This is more reflective of market level. In concluding a final rental rate, Mr. Pecesky applied \$20.00 for the good tenants and \$17.00 for the smaller clients.

54. Mr. Pececky testified that the treatment of the expenses differs among the parties. Only operational expenses were considered by the Respondent. The witness testified that he did not expense the property tax, given that the property tax load is better added and considered within the capitalization rate. None of the capital expenditures were expenses within the Respondent's pro-forma. The historic repair and maintenance expenditures were within the guidelines of IREM, International Real Estate Management, statistics.

55. The witness presented four rental comparables, which indicated a rental range of \$17.02 to \$21.15 per square foot. Each of the comparables was established as being competitive to the subject.

56. The witness presented a reconstructed operating statement for the 1997 income stream, which resulted in a concluded value of \$111,830,370.00. A second reconstructed operating statement was presented for the income stream for 1998, which resulted in a concluded value of \$114,407,770.00. Based on this information, the witness concluded a value from the income approach of \$112,370,000.00.

57. Mr. Pecesky testified that his goal in the valuation assignment was to establish the most reasonable sale price, which lends credence to approaches other than the income approach.

58. Mr. Pecesky testified that the current assigned value is \$101,566,700.00, and that he has allowed a \$4,000,000.00 deduction for deferred maintenance. This is similar to the basis on which the subject property was purchased on December 10, 1999, in which the Petitioners were allowed a deduction of \$4,000,000.00 from the purchase price.

59. The witness testified that he felt it was important to consider Statement 3 of USPAP, and that it was important to replicate the knowledge that was known as of that date in a retrospective appraisal analysis.

60. The witness testified to and identified three areas of the Central Business District that were considered to have the strongest locations: 17th and California, 17th and Lawrence, and 17th and Broadway. Buildings in the vicinity of the subject include Republic Plaza, the Amoco Building, and the World Trade Building. The witness indicated that while the paradigm may have changed, the subject location is still a good location. The location provides good access to government offices and other class A office uses.

61. The witness testified that the subject is a class AA building, based on his analysis and the perspective of local real estate market participants. Holly Proctor, the leasing agent for this building, called it an AA building. Additionally, David Tilton of Frederick Ross called the subject the building with the best finishes in downtown Denver.

62. The witness testified that 2/3 of the building is occupied by 4 tenants. Wells Fargo leases or subleases 25.5 floors. Newmont Gold, Gulf Canada Resources, and Teletech Communications, also occupy significant portions of the building.

63. Mr. Pecesky testified that he has visited the building on numerous occasions, and felt that the testimony of Mr. Green mischaracterized the subject as somewhat undesirable. He further explained that many of the offices within the subject have hardwood trim, polished tile, and other upgrades that are first class. Finish ranges from plain to elegant throughout the building.

64. Many other buildings in the CBD have a similar mixture of plain space to very elegant space. The public areas and executive offices are very nicely finished, while the space occupied by operational employees is far less opulent. This is typical for even class A and class AA buildings.

65. The witness testified that he would be very uncomfortable terming the subject a class B property. The subject is fully finished as office, and there are limited sales of this type in the market.

66. The witness testified that he felt the direct sales comparison, or market approach, is applicable, and provides a reasonable estimate of value.

67. The witness further testified that the previous owner of the subject, Cornerstone, reported to the SEC in one of their filings, that the property was worth \$180,000,000.00

68. The witness testified that he has addressed the applicable deferred maintenance issues within the income analysis through the application of a replacement reserve component. The 3.0% replacement reserve applied in the income approach, if capitalized, would indicate a value of \$5,000,000.00 plus/minus.

69. Mr. Pecesky testified that many of the buildings within the Central Business District marketplace have similar problems, i.e., attractive exterior, and problems with the interior mechanical and operational components.

70. The witness testified that he felt that the income approach was somewhat more suspect than typical in the case of the subject, given the problems with management that have been indicated. For this reason, he applied equal weighting to the direct sales comparison and income approaches to value.

71. Based on the reconciliation of the three approaches to value, a final value of \$115,000,000.00 was concluded.

72. The witness testified that market sales have to be looked at one way or another. If there is something to be gained, the sales should be examined to gain insight into the market.

73. In all of the surveys that the witness has examined, he testified that none include tenant improvement as a deduction in the income approach.

74. In referring to commentary comments he had provided as a rebuttal exhibit, Mr. Pecesky testified with respect to the use of median rental rates. It should be recognized that the subject is at the high end of the indicated range.

75. Mr. Pecesky testified under cross-examination, that the value concluded in his appraisal report is \$14,000,000.00 higher than the value presented at the Board of Equalization (BOE) hearing. He was uncertain if he relied on the income approach at the BOE hearing.

76. Mr. Pecesky testified that he had not eliminated the cost approach in his analysis. It is one of the approaches within which the value can fall.

77. The witness admitted that the current appraisal is the only appraisal in which deferred maintenance has been considered.

78. The witness testified that there might be some disadvantage to the subject location, but it was not, in his opinion, an extreme disadvantage.

79. The witness testified that the rent rates in place on this property are well below that of competitors in the CBD. The rents applied were strongly influenced by rent rolls on those properties, all of which are reflective of location influences. He felt that Republic Plaza represented a slightly better location, and that it was a trophy property, as was the subject.

80. When asked about the 410 Building, which he characterized as a class B building, with rents of \$14.00 per square foot, Mr. Pecesky testified that he did not understand how this property could be competitive to the subject property, when it could never hope to achieve the \$21.00 per square foot asking rents for the subject. The leases at subject are longer term by virtue of the Norwest lease; this is atypical for class B and C space.

81. The witness testified that there were two Class AA properties in the CBD “fringe.” They were identified as Tabor Center on the northern fringe, and 17th Street Plaza, on the northeastern fringe. The witness admitted that both of those locations are superior to subject.

82. The witness could not answer how many properties within the Central Business District have deferred maintenance, and noted that the Tabor Center had some design problems. The witness then cited other properties that had deferred maintenance. He noted that 1801 California has deferred maintenance, specifically an inadequate electrical system and other similar types of problems. During a tour of this property, there was a very high level of deferred maintenance. He also cited the MCI Building, which also had deferred maintenance; a \$3.5 million figure was given by owners of property.

83. The witness was not aware of the number of class AA buildings that have significant space devoted to low level banking operation, and was not aware of “banking” space. 17th Street Plaza has extensive occupancy by Public Service Company of Colorado, which had a large amount of space in the same configuration as the subject. In addition, 1801 California has an extensive amount space devoted to US West.

84. Mr. Pecesky reiterated through his testimony that he does consider the subject a trophy property.

85. The witness testified with respect to the extent of his inspection in 1997. He indicated that he went through most floors, including mechanical rooms and freight elevators, during a tour with maintenance personnel. He completed a relatively thorough tour. He inspected some of the mechanical rooms, but could not recall their location. He was in the restrooms on several floors, though he did not look at every floor. In the aggregate, he looked at perhaps 30 floors. During his inspection, he noted certain items, including leaking pipes, inadequate insulation, etc.

86. Mr. Pecesky testified that he did not utilize the newspaper articles and the opinions of value in these articles to influence his value.

87. Respondent assigned an actual value of \$101,566,700.00 to the subject property for tax year 2000.

88. Respondent’s witness, Laurie Van Court, MAI, Colorado Certified General Appraiser, testified that the definition of market value assumes a hypothetical sale, in essence going back in time.

89. Ms. Van Court testified that a market approach is critical in an appraisal because it is important to know who the buyers and sellers are. She additionally indicated that there is more than one market. One example she offered was a tenant looking to lease, who has utterly different motivation than the owner, or the seller, or the buyer.

90. The witness testified that sales are available to illustrate what buyers and sellers are doing in the marketplace. An important question for the appraiser to answer is what are the competitive buildings in the marketplace that did sell during the applicable period.

91. The witness testified with respect to the cost approach and how would a buyer look at the approach. The witness testified that she did not believe any of the buyers would actually have considered going out and building a replacement building. They do, however, use the approach in their analysis of the purchase decision.

92. What did motivate the buyer during this period was a mood of irrational exuberance; decisions were being made, not on the income being derived, but also based on the competitive nature of the market.

93. To rely solely on the income approach does not reflect the character of the time.

94. She examined the two reports in preparing for the hearing and in preparing a memorandum (Exhibit F) for the Respondent.

95. In rebuttal testimony, Petitioner's witness Timothy A. Green testified that it was not inappropriate to include capital expenditures in the property's operating expenses. Further, Mr. Green noted that the example provided by Mr. Pecesky is extreme. The witness additionally felt that the actual leases on the Norwest space and the Teletech space resulted in a lesser rent per square foot than that applied by the Respondent.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2000.

2. The Board has considered the methodology employed by both experts in the determination of the subject, and finds the methodology employed by the Respondent's witness to ultimately be more compelling.

3. The Board rejects Petitioner's assertion that Mr. Pecesky is to be held accountable for values and methods of valuation presented in a lower tribunal. All cases brought before the Board of Assessment Appeals are de novo in nature, and as such, the Board is not bound by any data presented to the Board of Equalization. The Board recognizes that mass appraisal valuation conclusions presented at earlier levels of appeal are subject to change when presented to the Board of Assessment Appeals within the structure of a single property appraisal.

4. The Board notes that Mr. Pecesky utilized all three approaches to establish value, and the application of three approaches provides validation and reliability to the subject's assigned value. The Board concurs with Mr. Pecesky that the cost approach and direct sales comparison approaches are less reliable, and also concurs that their consideration is appropriate. In the case of the direct sales comparison approach, the Board feels that this approach is relevant, as Mr. Pecesky states, in setting a floor on the market for the subject.

5. The Board concludes that physical depreciation has been adequately considered and applied by the Respondent in its asserted value. Though there is some disagreement as to the extent of the physical depreciation present, and the cost to cure, the Board believes that this physical condition has been adequately addressed in the valuation conclusions.

6. The income approach was relied on by both witnesses in arriving at a final valuation for the subject. The Board heard testimony on the collection, consideration, analysis and application of the data within the pro-forma analysis. The Board places the greatest reliance on the testimony of Mr. Pecesky, and believes that the capitalization of the income stream is best accomplished in the manner in which his pro-forma was constructed.

7. The Board was troubled by the potential that a capitalization rate used to convert an income stream to value, and including a deduction of capital expenditures, diminishes the net operating income. It is clear to the Board that there is a danger for giving a duplicate consideration to the same item, with the net result being a diminution in the valuation outcome. Though Petitioner attempted to minimize this difference, the Board feels that the Respondent's income approach is ultimately more compelling in its consideration of all relevant facts and conclusion of value.

8. While the Board finds that both Mr. Green and Mr. Pecesky have strong backgrounds in the valuation of commercial properties in the Denver Central Business District, they differ on their perception of the property from a locational perspective, as well as its physical condition. The Board notes that it was presented with a dichotomous portrayal of the property to the extent that it almost appeared as if two completely different buildings were being discussed. The Board must ultimately reconcile these two divergent views. On the whole, the Board believes that the Respondent's portrayal of the subject within its market provides the more balanced view.

ORDER:

The petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 30th day of October, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Debra A Baumbach
Debra A. Baumbach

Mark R. Linné
Mark R. Linné

This decision was put on the record

OCT 30 2001

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen

Diane Von Dollen

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