BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **ST. PAUL PROPERTIES, INC.,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: William A. McLain Address: 3962 South Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941	**Docket Number: 39954**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on July 9, 2003, Karen E. Hart and Judee Nuechter presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Maria Kayser, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

13100 East 39th Avenue, Denver, Colorado
(Denver County Schedule No. 01244-00-011-000)

Petitioner is protesting the 2001 actual value of the subject property; an industrial warehouse building located at 13100 East 39th Avenue, Denver, Colorado.

ISSUES:

Petitioner:

The subject property, located at Smith Road and I-70 and Peoria Street and I-225, consists of 8.8 acres of land and a multi-tenant distribution warehouse built in 1973. Heavy reliance on the income approach is appropriate for the multi-tenant building due to the age of the building and the differences in the ages of the comparable sales. The difference between Petitioner's value and Respondent's value is not large, but Petitioner contends that Respondent used higher end income. The testimony will show that the Petitioner's income approach is best and that the actuals are lower than market rent. The building is professionally managed.

Respondent:

Respondent agrees that the income approach is the most reliable indication of value. Respondent contends that the rent and the capitalization rate they used are more accurate and appropriate. The market approach also supports their income conclusion.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, Registered Appraiser and agent for Petitioner, presented the following indicators of value:

Market:	$6,415,920.00
Income:	$5,146,342.00

2. The witness testified that the subject property is an industrial building with 229,140 net rentable square feet located on 8.8 acres that fronts 39th Avenue. The building was constructed in 1973. It has multiple ceiling heights, dock-high doors and was built with Twin-T concrete construction. The offices have typical low-grade finish. Due to the age and depreciation of the building, the cost approach was not justified as a reliable indicator of value.

3. Mr. Stevens testified that the property is managed by Trammell Crow and that they are also the leasing agents for the subject property. Trammell Crow manages a large portfolio of similar properties throughout Denver, and they are considered very aggressive in industrial leasing.

4. Based on the market approach, Petitioner's witness presented an indicated value of $6,415,920.00 for the subject property.

5. Petitioner's witness presented four comparable sales ranging in sales price from $2,310,400.00 to $12,730,000.00 and in size from 87,758 to 454,800 square feet. After adjustments were made, the sales ranged from $23.43 to $33.03 per square foot.

6. Mr. Stevens testified that three of the four sales are located within close proximity to

the subject. The indicated value of $28.00 per square foot was based on the market approach, which was given limited weight. The market approach can have other factors, such as a discounted cash flow analysis or future income streams, which would be beyond the base period and was considered not as relevant as the income approach. Investors rely primarily on the income approach.

7. Based on the income approach, Petitioner's witness presented an indicated value of $5,146,342.00 for the subject property.

8. The witness testified that he looked at eight leases within the surrounding area for his income approach. The leased properties were considered comparable in size, ceiling height and access. Lease rates ranged from $3.00 to $3.41 per square foot. Petitioner utilized $3.25 per square foot for the subject property, although rental comparable #1 is the subject property and indicated at $3.00 per square foot. He also confirmed expenses on a triple net lease basis using $.85 per square foot as actual expenses, which was within the market range. The vacancy rate was determined using the Ross Research mid-year report for the northeast area of the city at 8.33 percent. Management fees were indicated at 3 to 5 percent for multi-tenant properties; Mr. Stevens used 4 percent, since that is the middle of the range. A 10 percent expense factor was determined for operating maintenance and reserves that were not charged back to the tenants, less property taxes. The capitalization rate was extrapolated from sold properties in the area and from the Integra Survey mid-year report. The Integra report indicated a 9 percent to 11 percent capitalization rate for the area, not including taxes. Mr. Stevens determined a 10 percent capitalization rate, loaded with a 2.3 percent rate for property taxes, for a total capitalization rate of 12.3 percent for the subject property.

9. The witness testified that he used actual information for the subject property. He derived a capitalized value of $5,146,342.00 or $22.46 per square foot for the subject property based on the income approach.

10. Mr. Stevens testified that page 24 of Petitioner's Exhibit A shows the actual income calculation with actual rents at $2.99 to $3.25 per square foot for the subject property. Reserves were indicated at 5 percent, with a 10 percent capitalization rate because property taxes are included in the expenses. The value of the subject property in 1999 was $3,825,628.00. Based on actual income and expenses through June 30, 2000 (which were then doubled) Mr. Stevens presented a 2000 indicated value as capitalized of $3,422,783.00 for the subject property.

11. The witness testified that non-recoverable items, such as tenant improvements and leasing costs, are amortized and that those expenses are treated as capital items.

12. Petitioner's witness testified that he examined the property shown in Petitioner's Exhibit B, a comparable sale located at 1600-1630 West Evans Avenue in Denver, Colorado, and that he spoke with the broker. This property was also used by the Respondent as comparable sale #2, and again as comparable sale #4, with different sale dates. Mr. Stevens could not find the data for Respondent's sale #4. The broker indicated to Mr. Stevens that, prior to the sale, the owners spent $1,000,000.00 to refurbish the building so that they could obtain higher rents.

13. Mr. Stevens indicated that the vacancy rate was much lower for the subject property than indicated at approximately 20 percent.

14. During cross-examination, Mr. Stevens testified that he did not prepare a cost approach. He acknowledged that sale #1 in Petitioner's Exhibit A was 20 years older than the subject and that it had more wear and tear than the subject, so he used a 10 percent adjustment for age. The time adjustment was .25 percent per month for all of the sales used in his report. The location adjustment was based on appraiser's opinion and indicated at 5 percent. Size differences were adjusted at 10 percent, and physical condition was shown as a 5 percent adjustment. Mr. Stevens did not like Respondent's comparable sales #2 and #4 due to their superior location and superior income stream as compared to the subject property. Sales #2 and #4 also have four buildings. Comparable sale 3 is an L-shaped building, which could be a problem to utilize all of the docks at the same time. Mr. Stevens believes his comparable sales #1 and #2 were the best sales.

15. During recross, the Petitioner's witness testified that the 2.3 percent tax load came from the prior year's tax levy. It is important to note that in triple net leases, the tenants pay property taxes. Mr. Stevens indicated that he relied primarily on the market data derived income approach, and gave little weight to the market approach.

16. Petitioner is requesting an actual value of $5,250,000.00 for the subject property for 2001.

17. Respondent's witness, Mr. Larry George, a Certified General Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

Market:	$7,763,200.00
Cost:	$6,905,000.00
Income:	$6,741,700.00

18. Based on the market approach, Respondent's witness presented an indicated value of $7,763,200.00 or $33.88 per square foot for the subject property.

19. Respondent's witness presented four comparable sales ranging in sales price from $4,600,000.00 to $12,730,000.00, and in size from 144,216 to 455,850 square feet. After adjustments were made, the sales ranged from $28.65 to $39.70 per square foot.

20. Mr. George testified that when comparing properties, it is important to look at size, the age of the building, the type of construction, and whether they are comparable in condition. Respondent's Sale #1 occurred within the 5-year base period and a .5 per cent per month time adjustment was applied. Respondent's Sale #2 had similar adjustments. Respondent's Sale #3 also occurred within the 5-year base period and it was a single tenant use property. Sale #4 was the same property as Sale #2, indicating two separate sales at different time periods. Mr. George gave equal weight to all of the comparable sales.

21. Respondent's witness testified that he reviewed the Petitioner's comparable sales and different time adjustments were applied. Sale #1 was an older building with significant depreciation, which affected the value. Sale #2 consisted of multiple buildings. Sale #3 had functional issues due to its L-shape.

22. Mr. George testified that he performed a physical inspection of the subject property on May 5, 2003, as well as several other times during the base period. The building was in average condition. He agreed with how the Petitioner described the property earlier in the hearing.

23. The witness testified that he looked at all three approaches to value, and that he gathered cost and market information, as well as rental information. He used the income approach to determine his final value. The area is 95 percent built-up with industrial warehouse type properties. During the base period, the economic climate indicated decreasing vacancies, increasing sales and decreasing capitalization rates.

24. Respondent's witness testified that he used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $6,905,000.00 or $30.15 per square foot. He used Marshall & Swift Cost Estimating Service as a final check, but did not correlate the Marshall & Swift value to his final opinion.

25. Respondent's witness used the income approach to derive a value of $6,741,700.00 for the subject property.

26. Mr. George testified that he determined the rental rate from four comparables with an indicated value of $4.00 per square foot, and that he used 229,140 net rentable square feet for the subject building. Surveys and published sources utilized by the witness indicated a 7 percent vacancy rate, a 13 percent expense ratio, and an 11 percent capitalization rate. An indicated value of $29.42 per square foot was derived from those expenses. The expenses were also based on information received from letters sent to all industrial building owners for the mass appraisal process. The capitalization rate was derived from published sources and sold properties for which the Assessor's Office had income information available. The Respondent used a tax load of 1.7 percent. The higher tax load used by Petitioner was based on the previous year.

27. In comparing the income approach prepared by the Petitioner, the witness testified that the potential gross income is similar to his figure, but they differ in the vacancy rate. The taxes were already in the Petitioner's analysis and the capitalization rate should not be adjusted. It is possible that the Petitioner may have deducted property taxes twice in his analysis. The Petitioner used the Winter Edition of the Scott Stahl report when he should have used the Summer Edition for the appropriate base period.

28. The Respondent's witness testified that he investigated Sale #2 by pulling the building permit log. Based on that information, he could not find a permit for $1,000,000.00 of improvements. There were minor permits for roof and mechanical updates, but those did not total $1,000,000.00 prior to the sale of the property.

29. During cross-examination, Mr. George indicated that his value conclusion was based

on mass appraisal data or an average property without considering any special characteristics. The market estimate is based on classes of similar properties. He relied primarily on the income approach, as a potential buyer would look at that approach.

30. During cross-examination, Respondent's witness indicated that he was not sure of the rent for Sale #1. Adjusting the comparable sales for differences in rental rates was not his first concern, but it would be an indicator if everything else were comparable with the sales.

31. The witness testified that the vacancy rate used in his report came from surveys and published sources and that he uses those rates on all industrial properties unless there is something extraordinary.

32. Due to confidentiality laws, the Respondent's witness would not disclose the capitalization rates of the sales used in his report.

33. The witness testified that reserves, such as major tenant improvement and leasing expenses, were not included in the capitalization rate in his report, but were included as an expense. Based on the surveys he used, capitalization rates have taxes loaded back at 1.7 percent, rather than at 2.3 percent that was the actual prior year tax rate used by the Petitioner.

34. During redirect examination, the witness testified that the National Council of Life Insurers, Corpax, and Integra were the published sources he used to research capitalization rates.

35. Mr. George testified that two comparable sales should have similar rents if both are operating at efficiency, but they may not have similar rents due to differences in management style. That is why he does not look at rents in the market approach. He acknowledged that he is familiar with Trammell Crow and that they are active in the rental market in the Denver area.

36. Respondent recommended a reduction to \$6,741,000.00 from the assigned value of \$6,826,000.00 for the subject property for tax year 2001.

37. During rebuttal, Mr. Stevens testified that the Respondent had indicated that taxes were included twice. CAM expenses were derived from actual income and the property tax load was already incorporated into expenses. This figure is a monthly collection of taxes. CAM income includes taxes, whereas CAM expenses include tax deductions.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. The Board carefully examined the appraisal reports and analyses and reviewed all of the testimony presented. The Board recognizes that the income approach is the most appropriate method of valuation for income producing properties, as a potential investor would most likely rely on this approach. Both parties also agreed that the income approach was the best indicator of value.

3. Regarding the capitalization rate, the Board recognizes that the preferred method for ad valorem taxation purposes is to load the tax rate into the total capitalization rate. The Board notes that the taxes were already in the Petitioner's analysis, and that the capitalization rate should not be adjusted. The Board was convinced that the appropriate capitalization rate for the subject property should be 11 percent, which was used by the Respondent and was based on published sources and available income information from the Assessor's Office.

4. The Board was convinced that the Respondent's rental income was too high based on the eight rental comparables presented by the Petitioner. The Respondent relied on published data, as well as four comparable rental properties in determining a rental rate. The Board was most persuaded by the Petitioner's comparables; they were more similar to the subject property, with consideration given for the actual rental income of the subject as indicated by the Petitioner.

5. The Board was most convinced that the Respondent applied the appropriate vacancy rate in their analysis based on published data, surveys and testimony that indicated decreasing vacancies and increasing sales in the strong economic climate taking place during the base period.

6. The Board determined that the appropriate rental rate for the subject property should be $3.25 per square foot, multiplied by 229,140 square feet, indicating a potential gross annual income of $744,705.00. Using Respondent's vacancy rate of 7 percent, which calculated to $52,129.00; a 13 percent expense deduction of $90,034.88 before property taxes; and an 11 percent capitalization rate, the Board has concluded to an indicated value of $23.91 per square foot for the subject property via the income approach.

7. The Board concluded that the 2001 actual value of the subject property should be reduced to $5,477,645.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to $5,477,645.00.

The Denver County Assessor is directed to change his records accordingly.

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 9th day of September, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Judee Nuechter

Judee Nuechter

This decision was put on the record

SEP 08 2003

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

Penny S. Lowenthal

Penny S. Lowenthal

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