BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **PCMT PARTNERSHIP,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	
Attorney or Party Without Attorney for the Petitioner: Name: Dan R. Bartholomew Address: 2121 S. Oneida Street, Suite 600 Denver, Colorado 80224 Phone Number: (303) 757-1799 Attorney Reg. No.: 16772	**Docket Number: 40324**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on October 28, 2003, Debra A. Baumbach, MaryKay Kelley and Steffen A. Brown presiding. Petitioner was represented by Daniel R. Bartholomew, Esq. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

3775 South Pierce Street, Lakewood, Colorado
(Jefferson County Schedule No. 012582)

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property consists of a commercial building with 269,942 square feet of net rentable area built in 1977 on a 20.7-acre site at 3775 South Pierce Street, Lakewood, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued and that the Respondent incorrectly included all of the capital expenditures in calculating their income approach to value. The subject property is a special purpose building which includes a training center, gift shop, bar, cafeteria and hotel. Respondent did not take the Lessor's financial troubles into consideration.

Respondent:

Respondent contends that the subject has been correctly valued using the income approach.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Greg Evans, a Registered Appraiser, presented the following indicators of value:

Market:	$10,800,000.00
Cost:	$11,500,000.00
Income:	$ 9,300,000.00

2. Based on the market approach, Petitioner's witness presented an indicated value of $11,000,000.00 for the subject property.

3. Petitioner's witness presented eight comparable sales ranging in sales price from $1,900,000.00 to $30,900,000.00 and in size from 54,082 to 1,200,000 square feet, or $25.41 to $43.40 per square foot. After adjustments were made, the sales ranged from $6,430,828.00 to $10,767,986.00, or $23.82 to $36.89 per square foot.

4. Mr. Evans described the subject property as a special purpose private training center, built for and leased by Qwest (formerly Mountain States Telephone and Telegraph/US West). The building was constructed in 1977 and includes a classroom, auditorium, office, bar, cafeteria, and 143 dormitory rooms. The site is 901,779 square feet (20.70 acres). He testified that there are 7.5 years remaining on a 30-year lease, and that the lease also includes two additional 5-year options.

5. Mr. Evans testified that there were very few private training center sales similar to the subject. Of the eight sales presented, five are within the Denver metro area and the other three are located outside of Colorado. All of the comparable sales are educational facilities, with the exception of Comparable Sale 8, which is a training facility. Comparable Sale 1 is very similar to the subject in building size, the condition is good, the location is superior, but the site is smaller. Comparable Sale 2 is in good condition, with an effective age of 13 years. Comparable Sale 3 was built in 1974 and is superior in location. Comparable Sale 4 is a single tenant education facility in

good condition. Comparable Sale 5 is located in Leesburg, Virginia, and is owned by Xerox Corporation. It contains two buildings, one built in 1973 and the other in 1994, and included tenant improvements after the sale. Mr. Evans gave the most weight to Comparable Sale 5, as it is most similar to the subject. Comparable Sale 6 includes 92 dormitory rooms. Comparable Sale 7 is located in Dallas, Texas. Qwest purchased Comparable Sale 8, located in Denver, for use as a training office, but it does not have any dormitory rooms. Adjustments were made for land size, condition of sale, location, access and visibility. The adjusted price per square foot of the comparables ranged from $23.82 to $36.89. Due to the renovation of the subject property, Mr. Evans concluded to the upper end of the range.

6. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of $11,508,200.00.

7. As shown on page 13 of Petitioner's Exhibit A, Mr. Evans used $62.58 per square foot to determine a basic shell cost, plus indirect costs and profit of 5% to arrive at a replacement cost new for the improvement of $17,737,619.00. Due to the recent renovations made to the subject, physical depreciation was calculated at 5%. Market conditions dictated a 40% economic depreciation adjustment, yielding a depreciated improvement value of $10,110,443.00. The land was valued at $1.55 per square foot, resulting in a total cost new less depreciation of $11,508,200.00. He did not place weight on the cost approach due to prevailing market conditions during the base year.

8. Petitioner's witness presented an income approach to derive a value of $9,261,800.00 for the subject property.

9. Mr. Evans testified that the contract rent for the subject was $1,231,486.00. He estimated a 5% vacancy and collection loss, yielding an Effective Gross Income (EGI) of $1,169,912.00. A 5% management fee was deducted to arrive at a Net Operating Income (NOI) of $1,111,416.00. He applied a 12% capitalization rate to conclude to an indicated value for the subject property of $9,261,800.00, $9,300,000.00 rounded.

10. As indicated on page 30 of Petitioner's Exhibit A, Mr. Evans testified that the Lessor has had financial difficulties since fiscal year 2000, and that long-term commercial leases have little security. The subject is a training facility and the rooms are occupied only 40% of the time. As to the tenant improvements shown in Petitioner's Exhibit A, page 38, Mr. Evans testified that the owner receives no additional benefit from the improvements, and in fact, would make it more difficult to find another tenant.

11. Mr. Evans testified that the rental comparables shown in Petitioner's Exhibit A, page 34 were all triple net leases. Adjustments to rental Comparables 1 and 3 considered size and tenant improvement and the lack of dormitory rooms. The indicated rate was between $6.00 and 7.00 per square foot, triple net.

12. Mr. Evans valued the subject property based on four separate usages, as shown in Petitioner's Exhibit A, pages 31 through 33a. Market rent of $6.00 per square foot was used to value the property for single tenant use and for classroom use. He applied a 10% vacancy and collection

loss, a 5% management fee and a 12% capitalization rate, indicating a single tenant use value of $11,500,000.00 and a classroom use value of $7,400,000.00. Lodging use value was based on 143 rooms at $54.00 per night, multiplied by 365 days, less a 60% vacancy and collection loss and expenses at $6.38 per square foot. The NOI was capitalized at 12%, resulting in an indicated value of $11,600,000.00. As a dormitory, Mr. Evans calculated 143 rooms at a monthly rental of $450.00 multiplied by twelve months, a 5% vacancy and collection loss, less expenses of 40% and used a 12% capitalization rate, to conclude to a value of $11,100,000.00.

13. As indicated on page 38 of Petitioner's Exhibit A, capital expenditures for renovation amounted to $16,400,000.00. Mr. Evans testified that several million dollars were spent for the removal of asbestos. Figures for each item of improvement were not available, but Mr. Evans felt that none of these things added to the value of the subject and that the owner would not see any return on the renovations.

14. In cross-examination, Mr. Evans testified that the actual asbestos removal may have cost $1,000,000.00, but that figure did not include things like removing the walls or ceiling. The renovation may have added $3,000,000.00 to the value of the subject. He said that the tenant paid for all the renovation, but that the owner will not see any return on the improvements. He admitted that there is a provision in the lease for the lessee to buy the subject for $15,200,000.00. With regard to comparable sales, Mr. Evans testified that Comparable Sale 1 was a complicated sale that was part of a larger sale, which happened over a period of time. Comparable Sale 2 is a day school and did not have dormitory rooms. Comparable Sale 3 is also a day school, has training rooms, and had been rehabilitated at a cost of $10.00 per square foot. Comparable Sale 4 had been renovated at $15.00 per square foot and there was a new lessee. Comparable Sale 5 was a leaseback for a portion of the property. The buyer had renovated comparable Sale 6. Comparable Sale 7 was a strip center. The owner of Comparable Sale 8 acquired the property by purchasing a defaulted deed of trust. As to occupancy, Mr. Evens admitted that the subject was 100% rented during the base period, that the tenant never tried to pull out of the lease, and that they never tried to renegotiate a lower lease rate. Mr. Evans testified that he extracted the economic depreciation rate of 40% from the market and income approaches. For example, the cost new of the subject would be more in line with $100.00 per square foot, whereas comparable sales indicate $40.00 per square foot, which indicates depreciation of more than 50%.

15. Upon redirect, Mr. Evans referred to the lease, which is Petitioner's Exhibit B. According to page 12, paragraph 8.2 of the lease, since the tenant has leased the property for over 17 years, the $15,200,000.00 sale provision is not applicable. As to the capital expenditure, Mr. Evans testified that out of the $16,000,000.00, about $3,000,000.00 added value to the subject.

16. Petitioner is requesting a 2001 actual value of $11,000,000.00 for the subject property.

17. Respondent's witness, Jon S. Aasen, MAI, an appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	Not Applicable
Cost:	Not Applicable
Income:	$23,400,000.00

18. Respondent's witness did not present a market approach or cost approach to value.

19. Respondent's witness used the income approach to derive a value of $23,400,000.00 for the subject property.

20. Mr. Aasen testified that the subject is located in Academy Park, west of Pinehurst Country Club, in Lakewood, Colorado. The subject was designed by Mountain States Telephone and Telegraph Company (Mountain Bell) in 1977. The lease rate was based on cost, which is unusual. There have been no rental increases since 1977.

21. Mr. Aasen testified that the site contains 20.702 acres, plus a 1.215-acre parcel that has been incorporated into the property, for a total of 21.953 acres. The subject is 100% occupied and is primarily used for training, although it has some administrative offices. A breakdown of area uses is found in Respondent's Exhibit 1, page 14. The subject property has been valued based on the uses as shown in Respondent's Exhibit 1, Addenda Exhibit C.

22. Mr. Aasen testified that the actual rent paid on the primary building is $4.60 per square foot, triple net, which amounts to $1,231,485.91. The second smaller building is not included since the tenant owns the improvements. The $4.60 per square foot rent rate is below market since the rental rate was established in 1977. Mr. Aasen calculated land, construction costs, and time difference from the original lease date to June 30, 2000 to arrive at a time adjusted rent rate of $14.38 per square foot. He testified that this relationship indicates that the tenant has a positive leasehold estate due to the below market rent. In support of this assertion, he testified that another building with 200,000 square feet occupied by Qwest during the January 1, 1999 through June 30, 2000 base period leased for $12.15 per square foot.

23. Mr. Aasen testified that he used a 3% vacancy and collection loss, which is lower than Petitioner's, because Qwest is a long-term tenant and has not missed a payment. He applied a 1% management fee since the owner does not need to do anything. Further, since it is a triple net lease where the tenant pays all expenses, the capitalization rate must be adjusted to reflect the property tax load, which was 2.8%, to arrive at an adjusted capitalization rate of 13.3%.

24. Referring to Respondent's Exhibit 1, page 32, Mr. Aasen testified that the main issue is whether the renovation costs contribute to value. According to the tenant's records, $16,606,068.00 was spent renovating and expanding the subject property. This figure was adjusted downward for the costs of demolition and removal expense. As a result, the contributory value of

the leasehold improvements was $14,509,068.00. The leasehold improvement value is added to the leased fee interest (encumbered by the lease) of $8,891,700.00. This indicates that the subject property's overall value estimate is $23,400,768.00.

25. As to the cost approach shown in Petitioner's Exhibit A, Mr. Aasen testified that nothing in Jefferson County was built for $62.58 per square foot; it is more like $95.00 to $100.00 per square foot for an office building, and $80.00 to $90.00 per square foot for a hotel or motel. As to economic obsolescence, he could not find any vacancies to support economic depreciation. He indicated that land value was $4.25 per square foot rather than $1.55 per square foot as Petitioner's witness testified. He did recall a sale in Academy Park that sold for around $2.00 to $3.50 per square foot.

26. Regarding Petitioner's comparable sales, Mr. Aasen testified that Comparable Sale 1 was built in various stages over a number of years and that the condition of the property was not good. Comparable Sale 2 was confirmed with the buyer and broker, and part of the land was leased to a medical complex. It had eight buildings and the broker valued it as land. Comparable Sale 3 was confirmed with Mike Phillips, a buyer of distressed properties. This was a day school and in need of fix-up. Comparable Sale 4 was confirmed with the buyer and was bought as a redevelopment property. It was 80% occupied at the time of sale. Comparable Sale 5 is in another state, in a totally different market, has 919 rooms and is a lease back to Xerox. Comparable Sale 6 is in Massachusetts and may be in need of renovation, but he was unable to confirm the sale. Comparable Sale 7 is a strip center that was 70% occupied; the store was converted into classrooms and the property is not comparable. Comparable Sale 8 was leased to Qwest. There was a second deed of trust and some equity was returned. The lease amount was $3.37 per square foot and it included a 24,000 square foot basement.

27. As to the income approach, Mr. Aasen testified that the Petitioner's market rent of $6.00 per square foot is not enough because a typical investor would look at current rents and $6.00 per square foot provides nothing for the renovation.

28. Respondent assigned an actual value of $20,400,000.00 to the subject property for tax year 2001.

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 agrees with Petitioner and Respondent that, considering the age and condition of the subject property, depreciation is difficult to measure and little weight should be placed on the cost approach. Furthermore, after careful review of Petitioner's sales, the Board is most persuaded by Respondent's arguments that discrepancies and inconsistencies exist with regard to Petitioner's testimony. The adjustments have little support, and the Board questions the relevance

of using sales located outside Colorado without presenting an analysis of possible differences in value, thus making Petitioner's market approach weak.

3. Based on Petitioner's Exhibit A, page 30, the Board agrees that the tenant (Qwest) may have financial difficulties. However, based on Petitioner's and Respondent's testimony regarding history of payments, rental rate and occupancy, the Board is not convinced that tenant's financial difficulties had any affect on the income stream during the base period. The fact that the tenant invested heavily to renovate the property is an indication that they thought it was a good investment.

4. Both Respondent and Petitioner presented an income approach. While the Petitioner did not place the most weight on this approach, it did provide the Board with rental comparables to support a market rent. The Board believes that, since the subject is an investment property and would typically be bought and sold on an income basis, this approach should be given most weight.

5. The Board does not agree with Respondent that time trending is an appropriate method to determine the reasonableness of a lease rate. The Board is most interested in <u>fee simple</u>, not leased fee, interest as testified to by Respondent, and believes that market rent should be used. Although Respondent presented an income approach, the Board could not rely on it since no market rental rates were submitted. Additionally, Respondent added the cost of capital improvements to its actual contract rent income approach conclusion, and valued a leasehold rather than fee simple interest. The Respondent developed a capitalization rate of 13.3%, which reflected the property tax load. Since the tenant pays all expenses under a triple net lease, the Board does not agree with Respondent that the capitalization rate should be adjusted to reflect the tax load.

6. Petitioner presented a list of capital expenditure items shown in Petitioner's Exhibit A, page 38 and Respondent presented costs based on public records. The Board could not determine the costs for the individual items since none were submitted. However, the Board agrees with Petitioner that most of the improvements were for the benefit and use of the tenant and would not result in any substantial benefit to the owner. The Board reviewed Petitioner's rental comparables and noted that they were constructed between 1969 and 1977, which suggests that the same materials found in the subject may also be present in these buildings. The lease rate difference between $6.00 and $7.00 per square foot could reflect a capital reserve. The Board believes Petitioner's vacancy and collection loss and management fees are high since the tenant has not missed a payment and little management is required under a triple net lease. The Board recalculated the income using $6.00 per square foot, a vacancy and collection loss of 1%, a management fee of 5% and Petitioner's capitalization rate of 12%.

7. After careful consideration of all of the evidence and testimony presented, the Board concluded that the 2001 actual value of the subject property should be reduced to $12,700,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property of $12,700,00.00.

The Jefferson 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 the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 19th day of December, 2003.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Steffen A. Brown

This decision was put on the record

DEC 18 2003

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

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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