

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>FIRSTBANK HOLDING COMPANY,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 50336</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on February 11, 2010, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by David V. Cooke, Esq. Petitioner is protesting the 2008 actual value of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**1617 East Colfax Avenue, Denver, Colorado  
Denver County Schedule No. 02355-36-028-000**

The subject property is a one-story branch bank building with a gross building area of 5,881 square feet, according to Denver County records. The building was completed in 2007 and is situated on a 28,218 square foot site zoned MS3 (B4). The construction is reinforced concrete frame with brick over concrete block exterior walls with a flat roof. The structure includes the primary bank space, storage, and an atrium walkway that provides entry to the bank. The building interior includes teller stations, offices, conference room, a vault, and other support areas. The site has small landscaped areas, typical of urban development, lighted asphalt paved parking on the north side of the building, and a drive-up ATM. The current owner purchased the subject site in April of 2005, within the statutory data collection period, for \$1,400,000.00. The owner built the subject improvements for its own use and has occupied the building since it was completed.

PETITIONER:

Ms. Carolyn Carter, CPA, and a Licensed Appraiser in Colorado, and Mr. Jeffrey M. Monroe, a Registered Appraiser, appeared as witnesses for Petitioner. Both witnesses are employed by Tax Profile Services. Ms. Carter presented an appraisal of the subject property using the cost, market (sales comparison), and income capitalization approaches to value. Ms. Carter testified that the atrium walkway space of the building and the storage area at the rear of the atrium were added only to meet the Main Street Act zoning requirements and the atrium in particular is a super adequacy, providing no useful function. It is the opinion of both witnesses that including that square footage results in overvaluation of the property. Ms. Carter also testified that it is widely known that banks consistently overpay for land.

For the cost approach, Ms. Carter used a land value of \$1,400,000.00, the April 2005 purchase price of the subject site by the owner. No other comparable sales were presented. The witness testified that she measured the building and concluded to a total square footage of 6,173 square feet including 4,750 square feet for the main portion of the bank, 1,023 square feet for the atrium walkway, and 400 square feet of storage. The witness's square footage is described in Petitioner's Exhibit 1 as "inner gross area." The Marshall & Swift cost estimator service was used to estimate the replacement cost of the improvements. The witness separated the structure into bank occupancy, storage warehouse, and atrium uses, in addition to miscellaneous items for the cost calculations. Using the third party estimator, the witness concluded to an initial depreciated cost of the improvements of \$1,122,140.00. According to the witness, bank fixtures should be deducted from the cost because they are declared and taxed as personal property and concluded to a deduction of \$190,000.00 for the fixtures. This resulted in a combined indication of value by the cost approach (land + improvements – fixtures) of \$2,332,140.00.

The Board notes that the Marshall & Swift cost service does not include the cost of most specialized fixtures and equipment in the base cost of structures, rather, they are factored in as adjustments to the base cost. For example, in the case of a branch bank, the cost of a vault is included in the base cost, but other fixtures and equipment specific to the bank operation are to be added separately. Though it is appropriate to separate the equipment and fixtures that are taxed as personal property from the taxable value of the real estate, the witness's cost analysis presented in Petitioner's Exhibit 1 does not provide adequate detail for the Board to determine that the inclusion of the cost of the bank fixtures and equipment and subsequent deduction by the witness were accounted for accurately. The Board also notes that although the witness testified that the atrium square footage is a super adequacy, no support for an adjustment to the cost approach for functional obsolescence is provided and no adjustment was made. In response to a question from Respondent's attorney, the witness agreed that the value of the subject site was the same at the end of the base period as on the date of the sale.

Petitioner's witness presented a market approach to value including 17 comparable sales ranging in price from \$505,000.00 to \$4,510,000.00 and in size from 2,026 to 19,613 square feet. On a per square foot basis, the sale prices ranged from \$121.00 to \$721.55. The witness selected five sales with a range in price of \$133.47 to \$234.65 per square foot as the most comparable to the subject. The witness did not make adjustments to the sales for changing market conditions (time), differences in location, age of the improvements, or other physical characteristics. Ms. Carter used a

value of \$234.65 per square foot for the subject and applied that to the 4,750 square foot area of the building that serves the primary banking function, excluding the square footage of the atrium walkway and the storage. The rounded value conclusion using the market approach was \$1,114,600.00.

Of the 17 sales presented by the witness, the Board notes that seven occurred after the data collection base period that ended June 30, 2006. Of the five sales selected by the witness as the best comparables, three occurred after the base period and are not eligible for consideration. The remaining two sales occurred prior to the base period. Despite the age of those sales, the witness did not provide support for making no adjustment to the sales for changing market conditions from the dates of the sales to the effective date of the appraisal.

The witness presented an income approach with an indication of value for the subject property of \$1,299,500.00. Direct capitalization methodology was used. In developing the income approach, the witness concluded that it is appropriate to exclude the square footage of the atrium walkway from the analysis because, in her opinion, it contributes no value to the property.

The witness testified that she relied on the third party BOMA survey of rental rates in 2005 for commercial offices in Denver, Colorado. Use of commercial office rents excludes the bank fixtures that are declared separately as personal property. The witness concluded to a rental rate of \$22.55 per square foot including a 10% upward adjustment to the base rent to reflect various positive attributes of the location of the subject property. This rent was applied to the bank space in the building. The witness concluded to a lower rent of \$8.00 per square foot for the storage area located at the rear of the building. The witness did not provide actual leases that occurred during the base period as support. The BOMA survey showed an actual vacancy rate of 10.15%; the witness concluded to a lower vacancy rate of 5% stating that banks are considered a stable and desirable tenant. A management fee of 4% of gross revenue was used based on typical management fees according to actual FirstBank records, though evidence of those agreements was not provided. A 3% replacement reserve was used. The witness relied on the third party Smith/Burbach Real Estate Investment Survey, West/Central United States, from the summer of 2006 for the capitalization rate for a free-standing retail building and concluded to a rate for the subject of 7.5%. Capitalizing the net income estimate by this rate resulted in a value by the income approach of \$1,299,500.00.

Petitioner's Exhibit 1 states that rent for suburban location commercial offices were used. However, the Board notes that the documentation provided from the BOMA survey shows the base rental rate selected is from the Denver downtown office market of 600,000 square feet or more. This may not be the most comparable survey data for a free-standing branch bank building.

In summary, Petitioner presented the following indicators of value:

Cost:	\$2,332,140.00
Market:	\$1,114,600.00
Income:	\$1,299,500.00

In her reconciliation, Ms. Carter concluded that the cost approach was considered, but not used because it does not reflect the motivations of a market investor. The market approach was not

relied on because of the number of the sales presented that occurred outside the base period and because the subject improvements were not completed until after the end of the base period. In concluding to a value for the subject, the witness asserted that the income approach is the most reliable citing an article entitled "Bank Branch Valuation: An Empirical Approach" by Scott M. Schafer, MAI, which is included in the addenda of Petitioner's Exhibit 1. The author contends that the rent a bank institution is willing to pay for a branch bank depends on the deposit base that can be supported by a given location or to gain a larger presence within a given market area. The author contends that this most accurately reflects a bank's motivation. The reliability of the cost approach is constrained by the difficulties in accurately estimating construction costs and depreciation and because it is not relied on by buyers of these properties. The author further asserts that although branch banks are typically owner occupied facilities, any branch purchase must distinctly separate the real property from the business value, so banks typically rely on appraisals to set the real property value. Therefore, it is the author's belief that the sales comparison approach does not accurately reflect buyer motivation.

Based on the income approach, Petitioner is requesting a 2008 actual value of \$1,299,500.00 for the subject property.

RESPONDENT:

Respondent's witness, Mr. Douglas Berger, a Certified General Appraiser with the Denver County Assessor's office, presented all three approaches to value for the subject property and concluded to an indicated value of \$2,770,400.00 for the subject based on the cost approach. In Mr. Berger's opinion, the atrium walkway space is not a super adequacy for the property, so he has used the gross building area of 5,881 square feet, as determined by the County, in his analyses.

For the cost approach, Respondent presented three land sales, including the sale of the subject site. The sale of the subject and of one other property occurred during the base period. The sale of the third property occurred in 2004, prior to the base period. The three sales ranged in size from 18,767 to 28,218 square feet of land area. The sale prices ranged from \$1,150,000.00 to \$1,500,000.00, which is equivalent to a range of \$49.61 to \$79.93 per square foot. Mr. Berger did not make adjustments to the land sales for differences in location, size, or other physical conditions. Based on these sales, the witness concluded to a price per square foot of \$50.00 resulting in a value for the subject site of \$1,410,900.00. This compared to the sale price of the subject of \$1,400,000.00.

Next, the witness estimated the replacement cost new of the subject improvements. Mr. Berger presented building permit documents for the construction of the subject showing a construction cost of the improvements of \$1,359,500.00. He also used Marshall & Swift, a state-approved cost estimating service to derive a cost approach value of the improvements for the subject property of \$1,238,146.00 as a test of reasonableness. Because the subject property is new construction the witness relied on the actual construction costs reported of \$1,359,500.00. Adding the value of the land, the witness concluded to a value for the property by the cost approach of \$2,770,400.00.

Respondent's witness presented a market approach with three comparable sales of branch bank buildings ranging in price from \$1,306,200.00 to \$2,600,000.00 and in size from 2,778 to 8,037 square feet. On a per square foot basis, the sale prices range from \$317.98 to \$470.19. The Board notes that all three sales occurred in 2004 prior to the base period. Respondent's witness considered qualitative rather than quantitative adjustments for each sale. Therefore, the witness did not conclude to adjusted sale prices for the comparables. The witness concluded to a market value of \$400.00 per square foot for the subject, resulting in a value by the market approach of \$2,352,400.00.

Respondent's witness presented an income approach with an indication of value of \$1,658,600.00 for the subject property. Direct capitalization methodology was used for this analysis. To estimate a market rent for the property, the witness referenced seven confidential Income and Expense Letters provided to the Denver County Assessor's office by property owners during the base period. All of these properties were described as branch bank facilities in various quality categories. Because the Assessor's office is obligated to keep this information confidential, details about the properties were not provided. The indicated rental rates range from \$8.83 to \$42.00 per square foot. According to the witness, the wide range is likely due both to differences in physical characteristics among the properties and because some of the actual lease rates reported during the base period could, in some cases, represent the current contract rents for older long-term leases. The market rent was estimated at \$25.00 per rentable square foot on a triple net basis. Because the subject is a single tenant building, a 5% vacancy and collection loss estimate was considered reasonable. Under a triple net lease, the tenant is responsible for all operating expenses. The witness deducted 5% of the gross revenue to account for some of the owner's expenses that are not recoverable from the tenant such as accounting, reserves, and legal fees. The resulting annual net operating income for the subject was estimated at \$132,690.00. The witness concluded to a capitalization rate of 8% based on the 2007/2008 Branch Bank review for this type of property in the North Central Denver Business area. Capitalizing the net operating income by 8.0% produces an indication of value by the income approach of \$1,658,600.00.

Respondent's witness presented the following indicators of value:

Cost:	\$2,770,400.00
Market:	\$2,352,400.00
Income:	\$1,658,600.00

The witness concluded to a market value for the subject property based on his appraisal analysis of \$2,770,400.00. Respondent assigned an actual value of \$1,471,500.00 to the subject property for tax year 2008.

**SUMMARY:**

Petitioner contends that the atrium walkway space does not house banking use; therefore, it is a super adequacy for the improvements and contributes no value to the property. Petitioner believes that Respondent has overvalued the subject property by including the square footage of the atrium walkway in the analysis and by not assigning a lower value to the building's storage space. It is Petitioner's opinion that Respondent used dissimilar sales of branch bank facilities for comparison to

the subject because of their more suburban locations and that Respondent did not adequately adjust the sales for differences in physical characteristics in comparison to the subject. Petitioner contends that the cost approach is not a reliable method for determining the value of the subject, the most reliable approach is the income approach.

Respondent contends that Petitioner did not meet the burden to prove the value assigned to the subject property was incorrect. According to Respondent, the income approach is not the most reliable approach for this owner/user building. The cost approach is the most reliable because the property is new construction with little or no depreciation, the owner purchased the site during the base period, and the actual construction costs of the improvements were available. Respondent asserts that it is unreasonable for Petitioner to claim that the value of the subject property should be less than the purchase price of the land during the base period.

The Board concludes that Petitioner failed to present sufficient probative evidence and testimony to prove that Respondent's valuation for the subject property for tax year 2008 was incorrect. Petitioner's exclusion of the building's atrium space from the market and income approaches was not supported. While the bank branch valuation methodology article presented by Petitioner in support of reliance on the income approach may have merit, Petitioner did not present branch bank leases in support of the market rent used and did not otherwise develop the income approach in accordance with the case study presented by the author. It is also noted by the Board that the article cited states, "Although the cost approach has some relevance for appraisals involving new or nearly new facilities, very few financial institutions nationally are building new branches because of the existing oversupplied, competitive market." The fact that the owner sought out and purchased the subject site and built a branch bank facility during the base period indicates that the owner did not find a suitable existing facility to buy or lease in this area. Therefore, in this instance, to achieve the desired goal of establishing a bank branch in this location, the cost approach did have merit for the owner. Further, the Board agrees with Respondent that given the purchase of the site and development of the improvements during the base period, it is not reasonable for the value of the subject property to be lower than the price paid for the land alone.

**ORDER:**

The petition is denied.

**APPEAL:**

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-five 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-five days after the date of the service of the final order entered).

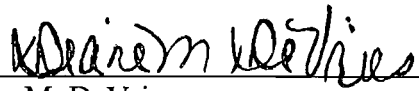
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

Section 39-8-108(2), C.R.S.

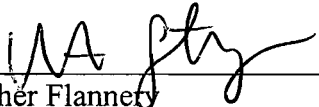
**DATED and MAILED** this 22<sup>nd</sup> day of April 2010.

**BOARD OF ASSESSMENT APPEALS**

  
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Diane M. DeVries

  
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Louesa Maricle

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

  
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Heather Flanner

