BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **FSP 390 INTERLOCKEN CORPORATION,** v. Respondent: **BROOMFIELD COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 53004**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 24, 2010, MaryKay Kelley and Louesa Maricle presiding. Petitioner was represented by Ronald S. Loser, Esq. Respondent was represented by Tami Yellico, Esq. Petitioner is protesting the 2009 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

390 Interlocken Crescent, Broomfield, Colorado
Broomfield County Schedule No. R1143879

The subject property is a 10-story Class A multi-tenant office building with a gross building area of 254,500 square feet and net rentable area of 241,516 square feet. The improvements were completed in 2004. The building is situated on a 13.417-acre site zoned Planned Unit Development (PUD) in the Interlocken Business Park next to U.S. Highway 36. A detailed description of the construction materials and interior space uses was not presented. The site is landscaped, typical of suburban development, and has large areas of lighted asphalt paved parking surrounding the building. The current owner purchased the property on December 21, 2006 for $46,800,000.00. The sale date is prior to the statutory data collection period of January 1, 2007 through June 30, 2008.

Respondent assigned a value of $45,121,230.00 for tax year 2009. Petitioner is requesting a value of $40,500,000.00 for 2009.

Petitioner:

The primary issues in Petitioner's appeal to the Board are the inequality of the values assigned to the subject property and to comparable properties, and the overall capitalization rate used to derive a value for the subject property using the income approach.

Mr. Joseph D. Monzon, Vice President of Marvin F. Poer and Company, appeared as witness for Petitioner. Mr. Monzon presented a consulting report including information for the subject and 11 other properties located in the Interlocken Business Park and nearby business parks in Broomfield County. The comparable properties range in height from three to ten stories. The building sizes range from 52,780 to 258,000 gross square feet. The information presented included the 2009 actual values assigned to the properties by Broomfield County, the purchase price and year of sale for nine of the properties (including the subject), and an assessment to purchase price ratio for the sales. One sale occurred in 2003 and eight sales took place in 2006, all prior to the statutory base period for the 2009 tax year. No comparable sales were found within the base period.

Mr. Monzon testified he does not believe the value assigned to the subject property should be higher than for the comparable properties presented. The assigned 2009 values for the comparables range from $109.11 per gross building square foot to $151.16. The 2009 value for the subject is $177.29 per square foot. Sales information was obtained from public records and CoStar, a third party real property data service. The sale prices presented range from $98.70 to $149.48 per gross square foot for the comparables and the price for the subject was $183.89 per square foot. The witness testified that the market for office properties was in decline during the base period, so the 2009 value for the subject property should be lower. Based on assessment values and the sale prices presented, the witness concluded to a value for the subject property of $40,462,955.00, which is $159.00 per square foot (rounded). In answer to a question from Respondent, Mr. Monzon testified that he did not complete a standard market approach to value, but presented sales and assessment values for nearby properties as a test of reasonableness.

Petitioner's witness presented an income approach with an indication of value for the subject property of $40,913,987.00. Direct capitalization methodology was used. The witness used an average annual net income calculated using the 2007 and 2008 operating income reported for the property. In this analysis, property tax was included as an expense rather than being excluded from the net operating income and added into the overall capitalization rate used. The witness based his overall capitalization rate on data presented in the Summer 2008 Burbach & Associates, Inc. Real Estate Investment Survey for the West/Central United States. The survey reports investment expectations reported by respondents including valuation/consulting businesses, commercial banks and other mortgage lenders, real estate brokers, and local and national private investors. The witness relied on capitalization rates reported for suburban/low rise office properties in the Denver market, which indicate a range of 7.25% to 10.0%. Using a capitalization rate of 7.5%, the witness concluded to a value for the subject property by the income approach of $40,913,987.00.

In summary, of the three standard approaches to value, Petitioner presented the following indicator of value:

Cost:	Not used
Market:	Not used
Income:	$40,913,987.00

Petitioner also presented an indication of value of $40,462,955.00 based on 2009 assessed values and sale prices for nearby office buildings. Petitioner cited Section 39-8-108(5)(b), C.R.S. as support for using assessed values for similar properties as credible evidence for value. Petitioner is requesting a 2009 actual value of $40,500,000.00 for the subject property.

Respondent:

Mr. John W. Storb III, Assessor for the City and County of Broomfield, testified as witness for Respondent. Mr. Storb presented all three approaches to value for the subject property and concluded to an indicated value of $45,500,000.00.

Mr. Storb used Marshall & Swift, a state-approved cost estimating service, to derive a cost approach value of the improvements. Including land value, Respondent's witness concluded to a value for the subject by the cost approach of $46,781,300.00.

Respondent's witness presented a market approach with three comparable sales that occurred prior to the statutory data gathering period, but within two years of the appraisal date, including the December 2006 sale of the subject. The sales ranged in price from $27,250,000.00 to $46,800,000.00 and in size from 180,810 to 254,500 gross square feet. On a per square foot basis, the sale prices ranged from $150.71 to $201.13. The witness considered quantitative adjustments to each sale for market conditions, location, land area, building size, quality of construction, and age. To support an adjustment for changing market conditions after the sales occurred, the witness relied on the CoStar third quarter office report for the Northwest and Southeast submarkets where the sales are located, as defined by that report. The CoStar report showed increasing rents and generally declining vacancy rates between 2006 and the second quarter of 2008 for the submarkets. After adjustments, the sales indicated a range of values for the subject of $159.83 to $193.08 per square foot. The witness gave most weight to the adjusted price for the subject sale of $193.08 and concluded to a market value of $190.00 per square foot for the subject, resulting in a value by the market approach of $48,355,000.00.

Respondent's witness presented an income approach with an indication of value of $44,000,000.00 for the subject property. Direct capitalization methodology was used for this analysis. According to the witness, the 2007 and 2008 operating statements for the subject property were provided to Respondent, but the rent rolls requested were not provided. To estimate a market rent for the property, the witness referenced the actual income for the property in 2008 versus 2007, and the CoStar historical asking rent reported for the subject's office space. The witness concluded to a rent of $16.50 per rentable square foot for the study period on a triple net basis. The common area maintenance revenue used of $11.57 per square foot was based on the 2008 actual revenue shown on the subject's income statement. Operating expenses of $6.90 per square foot, excluding taxes, were also taken from the 2008 operating statement. The witness also deducted 2% from income for replacement reserves. According to the CoStar survey, the vacancy rate for the subject property ranged from 3% to 5% for 2008. In the CoStar Denver Office Market Report the average office vacancy rate in the Northwest submarket was 12.8%. The witness used 13% as the market vacancy rate. The resulting annual net operating income for the subject was estimated at $4,108,581.00, excluding property tax expense. The sales presented in the market approach did not report capitalization rates. The CoStar report for mid-year 2008 stated that capitalization rates were lower in 2008 than in 2007. The witness concluded to a base capitalization rate of 6%, between the 4.44% rate shown by CoStar for office buildings ranging from 250,000 to 499,000 square feet in size, and the 7.82% rate shown for 50,000 to 249,000 square foot buildings. The witness added 3.33% to the 6.0% base rate to account for the effective tax rate for the subject. Capitalizing the net operating income by the tax loaded rate of 9.33% produces an indication of value by the income approach of $44,036,235.00, rounded to $44,000,000.00.

Respondent's witness presented the following indicators of value:

Cost:	$46,781,300.00
Market:	$48,350,000.00
Income:	$44,000,000.00

The witness did not give weight to the cost approach to value for the final conclusion. Weight was given to the market approach because it included the sale of the subject property just prior to the start of the base period. The income approach was given greatest weight. The witness concluded to a market value for the subject property based on his appraisal analysis of $45,500,000.00. Respondent is requesting that the Board uphold the assigned value of $45,121,230.00 for the subject property for tax year 2009.

Summary:

Petitioner contends that Section 39-8-108(5)(b), C.R.S., supports an appeal based on assessed values of similar properties and that the subject property is overvalued relative to the assessed values for other office buildings in the vicinity. Because there were no comparable sales within the base period, Petitioner agrees with Respondent that the income approach is the most valid of the approaches to value. Petitioner contends that the base capitalization rate used by Respondent is unreasonably low.

Respondent contends that Petitioner did not meet their burden to prove that the value assigned to the subject property was incorrect. According to Respondent, the market analysis presented by Petitioner should not be considered because no adjustments were made to the sales for specific attributes. Also, the comparison of assessed values is not a valid basis for valuation appeal. Respondent's witness presented an appraisal using all three standard approaches to value. In the absence of comparable sales within the base period, the use of the 2006 sale of the subject property and other sales that occurred within five years prior to the study period is accepted methodology. Respondent's witness testified that office lease rates were increasing during the base period and vacancy rates were declining, indicating an improving market, not a declining market as reported by Petitioner's witness. It is Respondent's opinion that the CoStar third party market report statistics used by Respondent's witness are more reliable than the Burbach survey used by Petitioner because it reports data from actual transactions while the Burbach survey shows data based on investment criteria desired by market participants of various types.

Petitioner used an equalization argument as one basis to support Petitioner's requested value of $40,500,000.00. There was no evidence or testimony presented which shows the Board that the assigned values of the equalization comparables were derived by application of the appropriate approaches to value and that each comparable was correctly valued. Because that evidence and testimony was not presented, the Board gave no weight to the equalization argument presented by Petitioner.

Despite the age of the sales, Petitioner's witness did not make adjustments to the sales for changing market conditions (time) from the dates of the sales to the effective date of value for the assessment period. Petitioner's witness also did not make adjustments to the sales for differences in location, age of the improvements, size, land area, or any other characteristics typically addressed in a market approach to value. For these reasons, the Board concludes that the sales analysis presented by Petitioner does not produce a credible indication of value for the subject. The market data presented by Petitioner did not convince the Board that the income capitalization approach presented by Respondent was incorrect.

The Board concludes that Petitioner failed to present sufficient probative evidence and testimony to prove that the value assigned to the subject property for tax year 2009 was incorrect.

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 22nd day of April 2010.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

Louesa Maricle

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

Heather Flannery

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

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