

<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>FIRST BANK OF DENVER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 60577</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 14, 2012, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Mitch Behr, Esq. Petitioner is protesting the 2010 actual value of the subject property.

Both parties agreed to stipulate to the qualifications of the experts and to the exhibits subject to cross examination.

Subject property is described as follows:

**1617 E Colfax Avenue, Denver Colorado 80218  
Denver County Schedule No. 02355-36-028-000**

The subject is a branch bank located at the northeast corner of Franklin Street and East Colfax. The structure was erected in 2007 and contains either 6,097 square feet (per Petitioner) or 6,124 square feet (per Respondent). The north side of the building is used for a parking area and a drive-up ATM.

Petitioner is requesting an actual value of \$1,520,140 for the subject property for tax year 2010.

Petitioner presented an income approach resulting in a value opinion of \$1,520,140.

Petitioner's witness, Mr. Jeffrey M. Monroe, presented a Valuation Summary relying upon an income approach to derive a value of \$1,520,140 for the subject property. Mr. Monroe referenced a local commercial publication to establish a rental rate for a small strip commercial property of \$22.00 per square foot on a triple net basis. Mr. Monroe also cited an asking rate of \$25.00 per square foot for a structure containing 5,005 square feet situated across the street. With this information, Respondent's witness concluded to a rate of \$24.00 per square foot for the bank. Mr. Monroe then separated the bank into two separate areas consisting of the bank and the bank vestibule. Mr. Monroe contended the vestibule was an inappropriate size and did not contribute income equal to a bank. The vestibule income was estimated to be \$12.00 per square foot which was applied to the 1,347 square feet of the vestibule area; the witness then applied \$24.00 per square foot rent to the remainder of the subject.

From the gross potential income derived above, the witness applied a vacancy factor of 5%. Further adjustments were applied to the collected income of 3% reserves for replacement and a 4.8% management fee. The resulting income was then capitalized by 7.5% derived by the use of another second hand data source to produce a value opinion of \$1,520,140.

Respondent assigned a value of \$2,500,00 for the subject property for tax year 2010 but is recommending a reduction to \$2,169,700, which is the value approved at the Denver County Board of Commissioners level.

Respondent presented the following indicators of value:

Market:	\$2,499,400
Cost:	\$2,566,700
Income:	\$2,413,400

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser, presented four comparable sales ranging in sale price from \$475,000 to \$3,333,000 and in size from 2,744 to 8,037 square feet. After adjustments were made, the sales ranged from \$1,750,300 to \$3,105,300.

The comparable sales were adjusted for level of finish (Sale 1 was gutted and converted to a check cashing and currency exchange operation), location, site size, building size, quality and age. After adjustments, Mr. Phinney concluded to a unit value of \$425 per square foot and a value opinion for the subject of \$2,499,400.

Mr. Phinney used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$2,566,700.

Respondent's witness presented four comparable land sales, one of which was the subject which was purchased in April of 2005 for \$49.61 per square foot. The comparable sales transacted in a range from \$42.23 to \$56.71 per square foot and a unit value of \$50.00 was adopted. Cost new and depreciated cost for the improvements was derived by use of the Marshall Valuation Service. A value of \$2,566,700 was concluded.

Mr. Phinney also used the income approach to derive a value of \$2,413,400 for the subject property.

Four comparable rentals were presented with an unadjusted range from \$31.35 to \$50.00 per square foot. Mr. Phinney correlated to the lowest end of the range and applied this rate to 5,881 square feet, the reported size per the Assessor.

A vacancy factor of 3% was applied and an additional 5% adjustment for management and reserves was deducted from the collected gross income. The resulting net operating income was capitalized at a 7% overall rate based upon ten year treasury rates of 4.55% in the first half of 2004, and sub-4% rates in the first half of 2008.

Mr. Phinney placed most reliance upon the cost approach with the other approaches providing support. Respondent assigned a value of \$2,500,00 for the subject property for tax year 2010 but is recommending a reduction to \$2,169,700, the value established by the Denver County Board of Commissioners.

Petitioner contends that Respondent has incorrectly applied lease rates from transactions resulting from "sale leasebacks" that are not representative of the market. Rates used for this valuation should be based upon equivalent retail rates for spaces of similar size. Sale leasebacks improperly give value to personal property such as teller lines that are unique to banking operations. Petitioner states the cost approach was improperly applied because personal property requires use of a segregated cost estimate which Respondent did not provide. Petitioner also questions the comparable sales used by Respondent as "sale-leaseback" transactions that are not based on market rates and include business value and further disputes the use of Sale 2 because Respondent's appraiser failed to properly consider an immediate prior sale at a lower price.

Respondent contends that Respondent's value analysis properly considered and applied all the appropriate approaches to value. Respondent's appraiser was able to find comparable sales within the valuation period. Respondent does not consider the use of a retail rent survey and the asking price for a nearby property as sufficient to determine the income. Respondent further asserts that the use of purely retail rents does not properly represent the higher quality of construction and finish of a bank building.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2010.

The Board was not persuaded by Petitioner's arguments. Petitioner's appraiser provided only one approach to value and that approach was flawed by reliance upon second hand data, mathematical contortions to isolate portions of the improvement and overstatement of building expenses. The Board is unwilling to place reliance on Petitioner's analysis and finds it misleading.

The Board agrees with both parties that the valuation problem is compounded by limited comparable sales and leases. It is that much more important in this situation to consider all

appropriate methods of valuation. The Board cannot agree with Petitioner that exclusion of the cost approach in 2010 for a property built in 2007 is appropriate.

**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 29th day of November, 2012.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

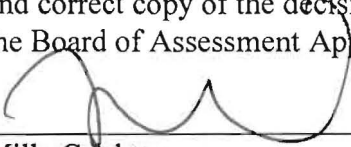
Debra A. Baumbach

*Gregg Near*

Gregg Near



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



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Milla Crichton