BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 61720
Petitioner: **FIRSTBANK,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March15, 2013, Gregg Near and MaryKay Kelley presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Mitch Behr, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

275 South Federal Boulevard, Denver, Colorado
Denver County Schedule No. 05086-32-045-000

The subject is a 3,863 square foot freestanding bank with drive-up teller windows. It was built in 2011on a .58 acre commercial site at the intersection of two high-traffic arterials.

Respondent assigned a value of $1,626,500 for tax year 2012. Petitioner is requesting a value of $1,115,428.

Petitioner's witness, Jeffrey M. Monroe, Registered Appraiser, declined use of the market approach due to the unreliability of sales data and the inclusion of mergers and leasebacks. He considered the cost approach unreliable for a going concern and determined that obsolescence, reflecting an economic downturn, was too difficult to determine. Mr. Monroe presented the following indicator of value:

Income: $1,115,428

Petitioner presented an income approach to derive a value of $1,115,428. Mr. Monroe presented the county-provided rental rate of $32.50 per square foot. To that, he applied a vacancy rate of 5% based on the stability and desirability of a bank tenant and economic factors. He estimated a reserve replacement for fixtures of 3% and a typical management fee of 3% to derive a net operating income of $108,862. Application of an 8% capitalization rate concluded to a going concern value of $1,360,775. Mr. Monroe then deducted the $221,433 cost of business fixtures to conclude to a value less affixed tangible personal property.

In his determination that affixed business fixtures should be deducted from the value of the real estate, Mr. Monroe cited *Del Mesa Farms, et al. v. Montrose CBOE*, 956 P.2d 661 (Colo. App. 1998), where the court noted that "...regardless of whether a particular item is affixed to a building and may otherwise constitute a fixture system, the item constitutes personal property if its use is primarily tied to a business operation ..."

Respondent's witness Richard Phinney, Certified General Appraiser, considered the market approach but declined to use it because he could not determine a clear pattern of behavior in the sales data. Respondent presented the following indicators of value.

Cost:	$1,700,874
	$1,854,000
Income:	$1,461,100

Respondent presented a state-approved cost estimating service to derive a value of $1,854,000. Information by Cole Layer Trumble with support from Marshall & Swift was the basis for cost figures. Land value was derived from mass appraisal.

Respondent presented a cost approach to derive a value of $1,700,874. Mr. Phinney applied actual costs that included the purchase price of the site minus demolition and fixtures (28% per Marshall Swift), the addition of landscaping, and a contingency fee for construction costs. Land value was based on mass appraisal. Respondent relies on this approach in final reconciliation.

Respondent presented an income approach to derive a value of $1,461,100. Mr. Phinney used a rental rate of $32.50 and applied a vacancy rate of 2%, considered typical for credit tenants, and operating expenses and replacement reserves of 5% to derive a net operating income of $116,890. An 8% capitalization rate was applied. Mr. Phinney declined to deduct business fixtures from the income approach because the income stream did not include fixtures.

Mr. Phinney, giving more weight to the cost approaches, reconciled at the subject's final conclusion of value at $1,700,000.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect.

The Board put limited reliance on Respondent's cost approaches. While actual costs are given more weight, application of the contingency fee was neither defined nor supported. Business fixtures, whose values were deducted from the approach, were not defined. External obsolescence was not applied. Land value was derived from application of mass appraisal.

The Board is persuaded that the income approach provides the better indication of value for the subject. The parties agreed on a $32.50 rental rate and a 8% capitalization rate. The Board finds Petitioner's 5% vacancy rate more reliable because it recognizes economic obsolescence. Petitioner's 6% management and replacement reserves better recognizes wear and tear. The Board is persuaded by Petitioner's arguments and the *Del Mesa Farms* case that business fixtures should be deducted. A recalculated income approach is as follows:

Potential Gross Income ($32.50 rental rate)	$ 125,550
Less Vacancy and Collection Loss (5%)	- 6,278
Effective Gross Income	$ 119,272
Less Operating Expenses (6%)	- 7,156
Net Annual Income	$ 112,116
Overall Capitalization Rate (8%)	$1,401,450
Less Intangible Personal Property	- 221,433
Income Approach to Value	$1,180,017

The Board concludes that the 2012 actual value of the subject property should be reduced to $1,180,017.

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to 1,180,017.

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

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 25th day of March, 2012.

BOARD OF ASSESSMENT APPEALS

Gregg Near

MaryKay Kelley

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

Milla Crichton

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