BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **CORRECTIONS CORPORATION OF AMERICA,** v. Respondent: **KIT CARSON COUNTY BOARD OF EQUALIZATION.**	▲
Attorney for the Petitioner: Name: Kenneth Kramer, Esq. % Berenbaum, Weinshienk and Eason, P.C. Address: 370 17th Street, Suite 2699 Phone Number: (303) 825-0800 E-mail: Attorney Reg. No.: 16929	**Docket Number: 38533**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 3 and December 4, 2001, Karen E. Hart and Judee Nuechter, presiding. Petitioner was represented by Kenneth Kramer Esq. Respondent was represented by Wade H. Gateley, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

> **(TR #3 CCA Annex, TR #3 Burl CCA Annex Unpl, Burlington County Schedule No. 36500003-R)**

Petitioner is protesting the 2001 actual value of the subject property, a medium security correctional facility built in 1998 with 768 regular beds, 52 segregated beds, and 2 medical segregated beds. The buildings total approximately 270,345 square feet and the site is approximately 105.93 acres, of which 65 acres are agriculturally classified.

ISSUES:

Petitioner:

Petitioner contends that the subject is classified as a Class C correctional facility. The City of Burlington and the State of Colorado offer a year-to-year contract to the facility with a maximum use of 505 beds per day guaranteed at $52.28 per bed. All three approaches to value were considered in the appraisal with economic obsolescence indicated due to the occupancy rate during the base period. The facility had an actual occupancy rate of 60% at the level of value date, which was June 30, 2000. However, both parties have used a stabilized occupancy rate of 90%. The income for the subject facility was lower than the Respondent's witnesses have utilized in their reports. The Respondent did not calculate economic obsolescence, has understated the expense ratio, and did not properly account for "return on" personal property. Respondent's witnesses did not properly calculate the capitalization rate; property taxes should be reflected in the capitalization rate and not deducted as an operating expense.

Respondent:

Respondent contends that the valuation of the subject property is based on all three approaches to value. The Respondent does not believe economic obsolescence is warranted. The subject prison facility was built in 1998 and was near new during the base period; it should be valued near the original cost. It is proper to deduct property taxes as an expense. The expense ratios came from the market and any differences in the income and other minor discrepancies does not substantially affect the concluded value.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Earl Wells, of Burr Wolf Consulting, testified that the Petitioner is one of the largest owners of private prison facilities in the country. Petitioner owns three private prisons in Colorado, including the subject property.

2. Mr. Wells testified that the subject property has 768 beds, 52 segregated beds, and 2 medical segregated beds. There were 311 beds filled as of the appraisal date. Petitioner has a one-year contract to house inmates from the State of Colorado at a daily lease rate of $52.28 per day per prisoner.

3. Mr. Wells testified that the private prison industry was doing well in 1997 and 1998. However, the private prison industry "tanked" in 2000.

4. Under cross-examination, Mr. Wells testified that he filed the appeal on behalf of Petitioner. The subject property was 40.5% occupied on the assessment date.

5. Petitioner's witness, Mr. Steven N. Bach, a Certified General Real Estate Appraiser, testified that he has been a real estate appraiser since 1964, and has a temporary

appraisal license in the State of Colorado. Unusual uses and commercial appraisals are his specialty. Mr. Bach was accepted by the Board as an expert in real estate appraisal, but not specifically as a prison appraisal expert.

6. Mr. Bach presented the following indicators of value:

Market:	$15,500,000.00 to $16,000,000.00
Income:	$14,800,000.00
Cost:	$15,900,000.00

7. The opinion of market value in fee simple of the subject property as of June 30, 2000 was indicated by the witness as $15,000,000.00.

8. The witness testified that 311 beds (40.5% capacity) were filled on the date of the appraisal and additional inmates were not available to fill the other beds. Since 1997 and 1998 the industry was predicted to increase the number of inmates due to increased crime at the state and the federal level. In 2000, the crime rate started to decline and 2001 it declined even further.

9. Competent management at the subject facility was assumed during the base period.

10. Mr. Bach testified that the three approaches to value were considered in appraising the subject property. The cost approach estimates cost new less depreciation from all causes with the addition of the land value. The sales comparison approach verifies similar sales including economic conditions, the interest sold, and the motivation of the buyer and the seller, and concludes a value after all comparison adjustments. The income approach identifies the revenues garnered by Corrections Corporation of America (CCA) from the City of Burlington and the State of Colorado contracts, as well as other income such as commissary and phone income. Taxes were not deducted as an expense, but were added to the capitalization rate. The subject is an income-producing property.

11. The witness testified that Corrections Corporation of America was a Real Estate Investment Trust (REIT) in December of 2000, but is currently a C Corporation.

12. Based on the income approach, the Petitioner's witness presented an indicated value of $14,800,000.00 for the subject property.

13. A market income estimate was utilized by the witness for the income approach. The State contract called for a per diem of $52.28 per bed at a guarantee of 505 beds per day. Other private facilities within the State of Colorado also have the same per diem. Commissary sales were considered for 1999 and 2000 at 4.65% to 5.02% of contract income for this facility. He used 5% in his report. Miscellaneous income is 1.26% to 1.95% of contract income; he used 1.5% in his report. The gross contract revenue for the subject was $15,607,713.00, which calculates to $20,300.00 per bed.

14. The occupancy rate was not stabilized on June 30, 2000. The average occupancy was 65% or 505 inmates in July of 1999, with 40.5% occupancy in June of 2000. It was

concluded by the witness that the total state prison occupancy rate was increasing at a decreasing rate over the past year with a reasonable stabilization rate at 90% predicted. The 90% rate was used in the witness' report as a stabilized rate for the subject property.

15. Mr. Bach received actual 1999 and 2000 expenses from the Corrections Corporation of America for the subject property and their other facilities within the State of Colorado. He broke them into eleven expense categories; 87 to 91% of the expenses were for food and commissary. Medical costs were indicated as increasing, similar to other prisons. Some of the expenses, such as maintenance, were stable and not based on occupancy rates. A figure of $41.61 per bed, or $11,664,115.00 was determined to be the annual expense for the subject property, based on a 90% occupancy rate. Taxes were not included in the witnesses report as he indicated the appropriate methodology is to omit taxes as an expense and apply the tax rate to the capitalization rate.

16. The witness testified that the net operating income must include a structural reserve expense for items such as roof or concrete problems; he calculated a reserve expense of $.06 per square foot.

17. Mr. Bach testified that the Marshall & Swift Cost Manual indicated a 50-year life for an average to good, class C prison. Additionally, one must deduct costs for furniture, fixtures and equipment (FF&E) from the income stream; they have a shorter life span than the realty. An estimated 10-year life was given to these items by the witness, resulting in a 10% recapture rate. He used 10.5% for the "return on" investment for the FF&E. The witness testified that he believes pre-opening expenses, known as "start-up" costs, must be deducted. Those expenses for "start-up" costs averaged $750.00 per bed in the three Corrections Corporation of America facilities located in Colorado.

18. The witness established a capitalization rate of 10.875%, which was based on a band of investment study. A sale of a prison in North Carolina was also used, which indicated a cap rate between 11 and 12%. The witness testified that he tempered the cap rate used in his report to 11%. The subject property tax rate was 2.6835%. The witness utilized a tax loaded capitalization rate of 13.6835 for the subject property.

19. Mr. Bach testified that he estimated 2 years to stabilize the prison occupancy rate to 90% for the subject property. Other private prisons are not at a 90% occupancy rate either. The State of Colorado Corrections Departments requires a 90% occupancy rate in their system before they will send inmates to private prisons. The State is presently constructing new prisons in Colorado. Mr. Bach calculated a total rent loss to the subject property of $941,804.00, which he deducted from the Income Approach value of $15,720,174.00 for a final market value via the Income Approach of $14,800,000.00.

20. Based on the cost approach, the Petitioner's witness presented an indicated value of $15,900,000.00 for the subject property.

21. The witness testified that one "pod" within the subject property has 100% vacancy. The State required that 52 segregated beds and 2 medical lock-down beds be

constructed at the prison. Typically only 5% of the total beds in a prison are required to be segregated beds, which would be 38 beds for the subject property. The witness testified that he believes there is a superadequacy, or economic obsolescence, due to the larger than typical number of segregated beds constructed at the subject property prison.

22. The actual total cost new of the subject prison, as provided by the owner of the facility, was $33,739,718.00 including furniture, fixtures, and equipment. Mr. Bach calculated a total replacement cost new for the facility, including soft costs, of $41,498,125.00. The total depreciation was determined to be $1,850,984.00, based on a 50-year life and an actual age of 2 years. The land value was estimated according to discussions between the witness and a local real estate broker.

23. Mr. Bach testified that a feasible rate of income must be established in order to justify construction of the prison. The rate used by the witness was 10.4% or $4,147,743.00. Using the witness' figures within his appraisal report, the subject property would show a deficient income of $2,393,831.00, which indicates economic obsolescence. Petitioner's Exhibit E was referred to by the witness in regards to measuring economic obsolescence, in which he believes that the subject's square footage or number of segregated beds indicates there is economic obsolescence at the subject prison.

24. Based on the market approach, the Petitioner's witness presented an indicated range in value of $15,500,000.00 to $16,000,000.00.

25. Mr. Bach testified that he had only one sale of a correctional facility for $25,200,000.00 and it occurred after the base period. Therefore, it had no validity to the subject property. The sales presented by the Respondent were not utilized by the witness, as they were considered Real Estate Investment Trusts (REITs). The witness admitted that he did not feel the sales comparison approach was a valid approach in estimating value for the subject property due to the lack of similar sales.

26. In order to use the sales comparison approach, the appraiser must know the details of each sale. Mr. Bach testified that he did not use the Corrections Corporation of America sales as they were Real Estate Investment Trusts (REITs) and included non-real estate considerations. REIT purchases were not typically market prices; REITs typically purchased properties at above market prices. The subject was valued in fee simple. His comparable sale was a leased fee with a 30-year lease in place. Mr. Bach testified that, although he calculated a market approach, he did not feel the approach was germane to the subject property.

27. Mr. Bach concluded a market value of $15,000,000.00 for the subject property, relying heavily on the income approach, as the subject is an income-producing property.

28. Under cross-examination, Mr. Bach admitted that the actual land area used for the prison could be 40 acres and not 30 acres as shown in his report. If 40 acres is used, an additional $50,000.00 should be added to the cost approach value. He testified that he used 768 beds in his report and not 824 beds, which included the segregated beds, in determining the occupancy rate. Mr. Bach admitted that he did not speak with other owners of private prisons.

He believed there was competent management of the subject property. He admitted that the 1999 actual expenses were less than the 2000 expenses, but believes this was due to the fact that expenses per inmate decrease as the number of inmates increase. He did not use data from other private prison owners; there is only one private prison in Colorado that is not owned by the Petitioner. He used 100% capacity in estimating his expenses.

29. Under cross-examination, the witness testified that he believes economic obsolescence is permanent for the subject property, and it was the largest deduction taken in the cost approach.

30. Mr. Bach admitted under cross-examination that his initial information for the Spruce Pine Prison sale came from the Internet. The sale price included intangibles and was a leased fee sale. The sale occurred after the appraisal date.

31. During redirect, the witness testified that the mill rate for the 2000 tax bill was 92.536%. He believes the Respondent used a total of 105 acres in determining the subject property value, although the tax notice indicates 170 acres. He does not believe poor management would affect the value of the subject property, since he used a stabilized occupancy rate. He did not use the Bent County prison sale, as he was told it was not an arms-length transaction.

32. Petitioner is requesting a 2000 actual value of $15,000,000.00 for the subject property.

33. Respondent's first witness, Ms. Abbey Mullis, a Registered Appraiser and the Kit Carson County Assessor, was accepted as an expert in real estate appraisal. She presented the following indicators of value:

Market:	$27,168,768.00 / $35,376.00 per bed
Income:	$31,536,000.00 / $41,063.00 per bed
Cost:	$31,402,980.00 / $40,990.00 per bed

34. Ms. Mullis testified that the subject property has approximately 40 acres located within the perimeter fence of the prison. There is approximately 65 acres of additional land that is classified as dry farm agricultural land. The subject property facility was first listed on the tax rolls in 1999.

35. Ms. Mullis testified that the historical cost of the subject facility including the purchase price of the land and total building costs was $34,155,618.00, with additional costs of $1,053,759.00 for furniture, fixtures and equipment for a total original cost of $35,209,377.00.

36. Ms. Mullis testified that the subject property has historically been valued according to the cost approach, which she felt was the most reliable of the three approaches to value. Her concluded unit value for the subject property was $41,000.00 per bed for 768 beds, or $31,488,000.00.

37. In cross-examination, Ms. Mullis admitted that her 75% expense ratio was an estimate and the actual expenses might have been 80%. Her capitalization rate was also an estimate and her effective tax rate was not correct. She admitted that the correct tax rate should have been 2.63% for a corrected cap rate of 10.63%. Regarding the market approach, Ms. Mullis did not make any adjustments to the sales for physical characteristics.

38. Mr. Jerry Wiemholt, from the Division of Property Taxation of the State of Colorado and a senior property tax appraiser, was introduced as the second witness for the Respondent. His duties include assisting county assessors in the state. As a Certified General Appraiser, he has appraised two prisons in Colorado and was accepted as an expert witness in real estate appraisal.

39. The witness testified that he personally inspected the subject facility in October of 1998. He reviewed Ms. Mullis' appraisal and believes she generally used the correct methodology in appraising the subject property. He testified that Ms. Mullis' expenses should not have been estimated and the tax rate used in her capitalization rate was incorrect. He did not review Mr. Bach's appraisal.

40. In cross-examination, Mr. Wiemholt testified that it was appropriate to consider economic obsolescence when valuing real property. Generally, taxes are loaded into the cap rate for ad valorem tax appraisals. He agreed that details of the sales must be known in order to use comparable sales.

41. Respondent's next witness was Mr. Keith Holbrook, MAI, owner of Keith Holbrook & Company. Mr. Holbrook is a Commercial Real Estate Appraiser and was accepted as an expert in real estate appraisal. He testified he has experience in appraising prisons and correctional facilities in Louisiana and across the country. On November 5, 2001, Mr. Holbrook completed a physical inspection of the subject facility.

42. Mr. Holbrook presented the following indicators of value:

Market:	$33,000,000.00
Cost:	$36,200,000.00
Income:	$31,300,000.00

43. The witness testified that he estimated the rent loss prior to establishing a stabilized occupancy rate of 90% in his report. The rent loss deduction is taken in each approach to achieve an "as is" value.

44. The highest and best use for the subject was discussed by the witness in relation to whether the facility is economically feasible. The rate of incarceration has increased per capita and the occupancy issues were recognized at the subject facility with no indication that the demand for beds has decreased. The witness believes the occupancy rate will be cured in the subject facility in time. He pointed out that the prison population has increased in a 9-year period due to the overall population increases in the state, and that his report shows the prison

population stronger than what was projected in 1999. The rent loss was forecasted over a one-year period to determine a 90% occupancy rate by this witness. The highest and best use of the subject property was determined to be a correctional facility.

45. Segregated cells in the prisons are used on a temporary basis to remove problem or ill inmates from the general population. The usual percentage of segregated beds at prison facilities varies from 5 to 10%.

46. Based on the cost approach, Mr. Holbrook presented an indicated value of $36,200,000.00 for the subject property, which included furniture, fixtures, and equipment (FF&E).

47. The land associated with the subject property was 109.455 acres in the original transfer per county records, with a county road later constructed within that area resulting in 105.93 acres effective for the subject site. The perimeter and access roads are part of the property and must be considered in valuing the property. However, Mr. Holbrook does not feel that the land value is much consideration in the final value of the subject property. He estimated 41 acres for the prison use, and considered the excess land area to be 65 acres.

48. The subject property has been classified as a Class C prison with approximately 270,345 square feet of improvements as taken from the construction contracts. He used fifteen or sixteen different comparables of other prison construction costs, in addition to the Marshall & Swift Cost manual, to determine that the subject property actual costs appeared reasonable. The contract costs indicated a per bed cost of $43,932.00. He estimated $36,500,000.00 for the total project cost, including soft costs and FF&E. Entrepreneurial profit was included at 5%. For physical depreciation of the real estate, he used an effective age of two years, with a 40-year expected life, for a 5% depreciation calculation.

49. For FF&E, the witness used an effective age of two years and a ten-year expected life for a physical depreciation of 20%. FF&E costs were estimated at $885,000.00, which he testified appeared reasonable when compared to other prisons.

50. Mr. Holbrook testified that no functional obsolescence for design was determined. If a superadequacy exists at the facility, it would only be 14 beds, which would be less than 1.8% of the rated capacity. He feels the facility design is extremely efficient.

51. Mr. Holbrook testified that the difference in the feasible income of the facility when it was built versus the income estimate at the date of the appraisal is the measure of external obsolescence. He does not believe there is any measurable economic obsolescence at the subject property. Any economic obsolescence would be reflected in the occupancy and expense rates that he used.

52. Respondent's witness used the income approach to derive a value of $31,300,000.00 for the subject property.

53. The witness discussed the difference in feasible net income for the subject property versus the difference in the income estimated as of the date of value. The witness' report showed negligible changes in expenses from the time of construction until the date of value. Any economic obsolescence has been addressed. Occupancy shortfall has a minimal affect in economic obsolescence.

54. The income for the subject property was calculated using the contract per diem rate, less the City of Burlington and the State of Colorado Private Prison monitoring fees, which resulted in a per diem of $51.15. State costs for prisons are similar in other states. He added miscellaneous income from the commissary. Other income is usually from phone calls, which is not recognized by the market and he did not include any other income amounts. The effective number of beds was calculated at 90% of 768 total beds, equaling 691 beds. He used a stabilized occupancy rate of 90%.

55. Expenses for the subject property were based on a percentage of the effective revenue. Expenses and income were higher in previous years in prisons in Colorado than during the base period. It was concluded that 25% is a reasonable net income from the subject property, which is based on a 75% effective gross income expense ratio. Property taxes are included in his expense ratio. His reconstructed expenses are $39.65 per compensated man-bed, based on 691 beds. He developed a capitalization rate of 10.49% using the band of investment method. He used a 10.5% capitalization rate, which was within the cap rate range indicated by his comparable sales. His value conclusion was $31,750,000.00, based on 691 beds. A rent loss deduction was taken in the amount of $435,000.00 for a final value conclusion via the income approach, of $31,300,000.00.

56. Based on the market approach, Mr. Holbrook presented an indicated value of $33,000,000.00 for the subject property, including FF&E.

57. The witness did not use a price per square foot, but used a price per bed in the market approach, which is typical for the industry. The Gross Rent Multiplier was developed from comparable sales using the sale price divided by a per diem multiplied by the rated capacity multiplied by 365 days. It does not consider the commissary or other income. The gross rent multipliers ranged from 2.11 to 3.31; he used a gross rent multiplier of 2.5. He deducted the rent loss and concluded to a value of $35,400,000.00.

58. The witness presented 10 comparable sales ranging in sales price from $12,786,914.00 to $47,000,000.00 and in size from 69,101 square feet to 357,048 square feet. After adjustments were made, the sales ranged from $30,677,000.00 to $52,956,000.00.

59. Mr. Holbrook testified that he had inspected the majority of the sales. He concluded to a value of $33,000,000.00 using these comparable sales, which included the Bent County, Colorado sale.

60. Mr. Holbrook testified that comparable sales 1, 2, 7, 8, and 10 were REIT sales. Sales 3, 4, 5, 6, and 9 involved government agencies. The REIT sales ranged from $30,667.00 to $55,072.00 per bed. The remaining sales ranged from $36,956.00 to $54,956.00 per bed. Sales

4 and 6 were minimum security facilities. Sale 9 was originally built for the purpose of leasing to Polk County, but the county chose to purchase the facility instead, which resulted in arbitration to determine a fair price. It is a medium security facility, similar to the subject property. It was not occupied at the time of sale. Sale 10 is a juvenile facility that was vacant at the time of sale.

61. Mr. Holbrook testified that his final reconciliation concluded a value of $33,000,000.00 for the subject property, in addition to the $65,000.00 for the excess land. He deducted $885,000.00 for FF&E, and concluded to a final value for the subject property of $32,115,000.00. His concluded value is lower than the cost and income approaches. He testified this value difference reflected any possible economic obsolescence for the subject property; however, he admitted that he did not include any mathematical calculations for economic obsolescence in his report.

62. Under cross-examination, the witness testified that the final reconciliation was a recognition of some form of economic obsolescence, but he acknowledged that he did not address it in the cost approach. He did not consider a 12.7% economic obsolescence significant in the overall scheme of his report. He was not familiar with economic obsolescence requirements in Colorado Revised Statutes. He acknowledged that the industry vacancy rates dropped from 95% to 90% as of the level of assessment date. It is a higher cost for the State to house prisoners than for private prisons. He does not feel "start-up" costs or travel costs should be allowable expenses, as they are company expenses, not real estate expenses. He admitted that the tax burden is approximately 6.3% of the expenses when calculated on his concluded value. He testified that taxes were included in his cap rate. He assumed that the FF&E in the sales comparables was similar to the subject.

63. In redirect testimony, Mr. Holbrook testified that he analyzed economic obsolescence, even though it is not written in his report. The expense ratio per prisoner will tend to decrease as occupancy increases.

64. Upon questioning by the Board, Mr. Holbrook again stated that his overall cap rate compensated for the tax rate. He affirmed that cap rates derived from sales would include taxes expenses. He testified that the taxes are compensated for in the band of investment cap rate calculation in the equity position, as that calculation is based on net income, after the deduction of all the expenses. "Start-up" costs are not treated as typical operating expenses. If the subject is already operating, the start-up costs have already come and gone; they would not be incurred again by the typical purchaser.

65. Upon questioning by the Board, Mr. Holbrook testified that he considered quality condition, size and gross building area in the comparable sales. He did not feel that adjustments were necessary. There is some economy of scale, but they are very minor adjustments. Any location differences resulting in contractual rate and expense differences would be considered in the gross rent multiplier calculation by virtue of the methodology. Many of the differences are accounted for in adjusted per diem rates with proportionately less expenses.

66. Respondent assigned an actual value for tax year 2000, which included 65 acres of dry farm land for which the value was not in dispute, as follows:

Agricultural Land value	$ 6,283.00
Commercial Land value	99,869.00
Commercial Improvement Value	$ 26,799,903.00
Total Value	$ 26,906,055.00

67. Although Respondent assigned an actual value of $26,906,055.00, Respondent is requesting that the Board of Assessment Appeals increase the value to $32,125,000.00 for the prison portion of the subject property.

68. In rebuttal, Petitioner's witness, Mr. Bach, testified that a tax valuation is not the same as market value. The state contract rate includes more than just real estate; it also includes items such as medical expenses, management, food, educational services, etc. Mr. Holbrook used the full sales price in his sales comparison and they should have been adjusted for contracts, etc. For ad valorem tax purposes, taxes should be included in the cap rate. Mr. Holbrook did not deduct the return on FF&E, which is required, nor did he include a structural reserve.

69. Mr. Bach believes that "start-up" costs must be amortized and deducted. He pointed out that the economy of scale theory did not hold true for the subject property, based on actual income and expenses. The 1999 actual expense ratio for the subject property was 78-79%.

70. In rebuttal, Respondent's witness, Mr. Holbrook, testified that Mr. Bach's methodology is "double-dipping" the property taxes. Mr. Bach did not include the taxes as an expense, yet he chose a cap rate that was consistent with market derived cap rates that included taxes as an expense. Mr. Bach then added the tax rate to the cap rate. Mr. Bach's expense ratio including taxes would be 85-86%. The subject property's 2000 operating expenses included 10.6% for depreciation. The subject property actual net operating income after depreciation was 22.6%; Mr. Holbrook used 25%. His concluded value is a "Market value" not a "Tax value".

71. In cross-examination, Mr. Holbrook admitted that the 22.6% was calculated from the Corrections Corporation of America (CCA) SEC reports for the entire company, not just the subject property.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board was presented with several expert witnesses that presented a wide range of value for the subject property. The Board carefully examined the submitted appraisal

reports and reviewed all the testimony presented. Each party in this case was successful in pointing out weaknesses in each of the presented reports and testimony. The Board will attempt to address each issue separately.

3. Respondent presented two experts who each presented a different value opinion. The Board was convinced that Mr. Holbrook had more experience in valuing properties such as the subject than Ms. Mullis. Ms. Mullis admitted to certain deficiencies in her report and much of her data lacked supporting evidence. Therefore, the Board chose to give the most weight to Mr. Holbrook's evidence and testimony for Respondent's portion of the appeal.

4. Regarding the sales comparison approach, Petitioner's witness, Mr. Bach, admitted that his one sale occurred after the assessment date, and the Board was not convinced that Mr. Holbrook's comparable sales were good arm's-length market sales requiring no adjustments. There was extensive testimony that REITs often paid above market prices for their purchases. There was also convincing testimony that the presented non-REIT sales were often encumbered with leases and would therefore have considerations other than real estate in the sales prices. Many of the sales involved government entities, which may have affected the sales prices. Mr. Holbrook made no adjustments to the sales prices, other than for size of the facilities. The Board was convinced that the sales required additional adjustments for other factors such as location and lease considerations. For these reasons, the Board gave lesser weight to the market approach.

5. The Board gave the most weight to the income approach as the subject property is an income-producing property, and a potential investor would most likely rely primarily on this approach.

6. The Board accepted Mr. Bach's potential gross income calculations of $15,607,713.00 for the subject property. The Board also accepted a vacancy rate of 10%, which was not disputed by either party.

7. Regarding the expense ratio, the Board was most persuaded by Mr. Holbrook's expense calculation of 75% as his figures were based on market data. Mr. Bach relied primarily upon the actual expense information of the subject property and other facilities operated by the Petitioner, and these expenses appeared to be higher than market experience. The Board did not give as much weight to the actual expenses of the facility as we were convinced that the subject was not yet stabilized due to a number of factors, including competent management.

8. The Board was convinced that a "return on" and "return of" personal property should be a deductible expense. The Board relied upon Mr. Bach's methodology and accepted his "return of" and "return on" expense deduction of $157,440.00.

9. The Board accepted Mr. Bach's structural reserve expense of $13,331.00.

10. Regarding the capitalization rate, the Board recognizes that it is acceptable to deduct property taxes as an expense in a fee appraisal. However, the preferred method for

ad valorem taxation purposes is to load the tax rate into the capitalization rate. The Board was convinced that the capitalization rate should be 10.5% with an added tax rate of 2.68%, for a total tax-loaded cap rate of 13.18%.

11. The Board was convinced that the time period for the calculation of rent loss should be one year, and determined a rent loss deduction of $443,661.00.

12. The Board made the above calculations and determined that the valuation of the subject property correctional facility via the income approach should be $24,905,080.00.

13. The Board was not convinced that start-up costs should be deducted as an expense. These expenses would be related to the business aspect of the subject property and not to the realty.

14. Regarding the cost approach, the Board considered this approach to be relevant to the subject property due to the relatively new construction of the facility. The Board was convinced that some amount of obsolescence must be present at the subject property, considering the income approach value conclusion did not support the depreciated cost to build the facility. However, as the Board relied upon the income approach to value the property, any obsolescence would be reflected in the income and expense calculations for the subject property.

15. The Board affirms the undisputed agricultural land value of $6,283.00.

16. After careful consideration of all the testimony and evidence presented, the Board concluded that the 2001 actual value of the subject property should be reduced to the following:

Commercial Improvement Value	$ 24,805,211.00
Commercial Land Value	$ 99,869.00
Agricultural Land Value	$ 6,283.00
Total Value	**$ 24,911,363.00**

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to $24,911,363.00.

The Kit Carson County Assessor is directed to change her records accordingly.

38533.02

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 17th day of April, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart, Chair

Judee Nuechter

Judee Nuechter

This decision was put on the record

APR 1 7 2002.

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

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

Mary J. Helzer

Mary J. Helfer

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