

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BEN VELDKAMP,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 South Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941</p>	<p>Docket Number: 40116</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 22, 2003, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**9485 West Colfax Avenue, Lakewood, Colorado
(Jefferson County Schedule No. 051771)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1999 and 2000. The subject property consists of a three-story, multi-tenant office building built in 1963 on a 36,750 square foot site, located in Lakewood, Colorado.

ISSUES:

Petitioner:

Petitioner contends that Respondent has overstated the income rate and understated the expense rate for the subject property in the income approach, as well as miscalculated the net rentable area of the subject. This has resulted in an overvaluation of the subject property.

Respondent:

Respondent contends that the subject property is correctly valued using all three approaches to value. The area of greatest dispute is the net rentable square footage. Petitioner used interior architectural designs, whereas the Assessor used actual measurements, excluding the mechanical room, staircases and elevator shafts.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Ronald C. Sandstrom, F & S Property Tax Consultants, presented the following indicators of value:

Market:	\$564,700.00
Cost:	\$699,000.00
Income:	\$450,000.00

2. Mr. Sandstrom concluded to a value of \$450,000.00 for the subject property, based on the income approach.

3. Mr. Sandstrom testified that the subject property consists of 17,595 gross square feet. From Colfax, the property appears to be a two-story building; from the back, it appears to be three stories. Asbestos was utilized in the construction of the building. A study to determine the cost of asbestos removal has not been conducted.

4. Mr. Sandstrom testified that pages 7, 8, and 9 of Petitioner's Exhibit A are floor plans showing useable square footage for tenant occupancy as drawn by an architect. The vertical fenestrations are the elevators, stairwells, and air plenum. He deducted the vertical fenestration square footage for a resulting 15,680 square feet of rentable area. He then deducted the restrooms and stairway for a resulting useable area of 13,575 square feet. To determine the rentable area, he measured the interior of the stairwells, air plenum, and the exterior of the elevators, air area and boiler room. The 13,575 square foot figure is from the architect drawings.

5. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$699,000.00.

6. Mr. Sandstrom testified that he used \$8.00 per square foot for the land value. The area along Colfax is primarily commercial retail use. He classified the subject as a Marshall & Swift Class S, average building, with a first floor basement or garden level. The replacement cost new is \$895,979.00, with a depreciated value for the improvements of \$376,311.00. He then added costs for asphalt and the garage, for a total depreciated value of \$699,321.00. Mr. Sandstrom put little, if any, reliance on the cost approach. There is no allowance to clean the asbestos; without a cost to cure, he could put no reliability on the cost approach. Additionally, a buyer would not consider the cost approach.

7. Based on the market approach, Petitioner's witness presented an indicated value of \$564,700.00 for the subject property.

8. Mr. Sandstrom testified that he used sales provided by the Assessor's office to determine a sales price of \$36.07 per square foot of rentable area, without consideration to the asbestos issue. Potential purchasers would give little weight to the market approach; they would look most to the income approach.

9. Petitioner's witness presented an income approach to derive a value of \$450,000.00 for the subject property.

10. Mr. Sandstrom testified that Petitioner furnished him with the actual rents and expenses for 1996, 1997 and 1998. The two-year net operating income (NOI) average of 1997 and 1998 was \$57,667.00. He used Respondent's capitalization rate of 12.8% to arrive at \$450,523.00. He also calculated a value based on the December 31, 1997 rents.

11. Mr. Sandstrom testified that he calculated a value using the total useable space of the property based on actual income and expenses. He used a 15% vacancy rate (the actual vacancy rate of 14% rounded to 15%). All three of his income calculations came to \$450,000.00, rounded.

12. Mr. Sandstrom testified that pages 20-21 of Petitioner's Exhibit A show the Jefferson County Assessor's Office Income Model Number 3. The three properties most comparable to the subject in size indicate a high-end rental rate of \$9.00 per square foot. The subject property's actual rental rate is \$8.87 per square foot. He used expenses of \$4.43 per square foot versus the \$4.50 per square foot shown for expenses for the aforementioned comparable buildings in the income model.

13. Mr. Sandstrom testified that Mr. Veldkamp maintains a small office in the building; he is not affiliated with Veldkamp's, Inc.

14. In cross-examination, Mr. Sandstrom testified that he could not identify the breakdown of repairs and maintenance for the subject property. The phone expense is the amount paid to Veldkamp's, Inc. for Mr. Veldkamp's expenses. The owner of the property is Mr. Ben Veldkamp, Jr. Mr. Ben Veldkamp III owns and operates Veldkamp's, Inc., the floral business. There is no management fee in the expenses. The exterior measurements calculate to 17,595 square feet. The architect was to determine the useable square footage and did not include the hallways or restrooms. Steel buildings of this vintage usually have asbestos.

15. Mr. Sandstrom testified that he found no sales of office buildings located on Colfax Avenue. He admitted that the accuracy of the income approach relies on the accuracy of his measurements. There are some excess expenses, but they are not included in either area; he believes the excess expenses were for property taxes. The largest tenant pays \$10.50 per square foot, but the rent is based on useable area.

16. In redirect, Mr. Sandstrom clarified that his net rentable area includes the hallway and restroom areas in the square footage, for which he used \$8.87 rent per square foot based on actual rents. The rental rate is \$10.25 when utilizing the useable area square footage. He converted useable area to rentable area in his analysis.

17. Petitioner is requesting a 1999 and 2000 actual value of \$450,000.00 for the subject property.

18. Respondent's witness, Mr. Randall K. Brenimer, a Certified General Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	\$642,500.00
Cost:	\$993,500.00
Income:	\$571,000.00

19. Mr. Brenimer testified that the Building Owners and Managers Association (BOMA) guidelines recommend that you remove the square footage of major vertical fenestrations, including stairwells and elevator shafts, to achieve net rentable area. The subject property's boiler room is atypically large; he removed it from the building square footage for the market and income approach. The building is unusual for its age and construction materials.

20. Based on the market approach, Respondent's witness presented an indicated value of \$642,500.00 for the subject property.

21. Respondent's witness presented five comparable sales of three different properties ranging in sales price from \$305,000.00 to \$1,022,500.00, and in size from 11,648 to 25,659 square feet. After adjustments were made, the sales ranged from \$32.88 to \$40.74 per square foot.

22. Mr. Brenimer testified that the market approach was used as a check of reasonableness for the income approach. He selected three primary sales. One property sold twice and another sold three times in the appropriate time period. The median sales price was \$39.57 per square foot. The indicated market value is \$39.57 per square foot, or \$642,500.00. The subject's assigned value is \$35.54 per square foot or \$577,100.00.

23. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$993,500.00.

24. Mr. Brenimer used a land value of \$8.00 per square foot for a total land value of \$294,000.00. He used the computerized Cole-Layer-Trumble (C.L.T.) cost system to arrive at a

total depreciated building value of \$699,497.00, for a total property value based on the cost approach of \$993,497.00.

25. Respondent's witness used the income approach to derive a value of \$571,000.00 for the subject property.

26. Mr. Brenimer calculated a rentable area of 16,237 square feet, and used a rental rate of \$10.00 per square foot. All office buildings in Jefferson County are valued according to net rentable area. He used an estimated expense rate of \$4.00 per square foot, with a 15% vacancy rate, for a net operating income (NOI) of \$73,067.00. He used a capitalization rate of 12.8% for a value of \$571,000.00 via the income approach.

27. Mr. Brenimer concluded to a value of \$600,000.00 for the subject property as of June 30, 1998.

28. Under cross-examination, Mr. Brenimer testified that, according to the Integra survey, most investors rely on the capitalized income approach. The measurements shown on page 17 of Respondent's Exhibit 1 for the stairwells and elevator are interior measurements; they do not include the elevator shaft. There were no properties located on Colfax Avenue in the Income Model shown on page 26 of Respondent's Exhibit 1, and there are four older buildings (pre-1970). Mr. Brenimer used \$6.00 per square foot for net operating income before vacancy.

29. Respondent assigned an actual value of \$577,100.00 to the subject property for tax years 1999 and 2000.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property for tax years 1999 and 2000 was incorrect.

2. Neither party relied on the cost approach, and the Board agrees that this approach is not reliable due to the subject property's age.

3. Petitioner's witness presented a minimal market approach analysis. Respondent used the market approach as a check of reasonableness for the income approach. The Board gave secondary weight to Respondent's market approach.

4. The Board agrees that the most weight should be given to the income approach. The primary disputes are over the net rentable area of the subject property, the expense rate, and the income rate for the subject property. The Board was not convinced that the actual income and expenses for the subject property were indicative of market rates. A portion of the subject property is leased to Veldkamp's, Inc., and some expenses are not clearly defined. There is no management expense for the building. Petitioner's witness admitted that there appeared to be some excess expenses, although he did not believe that they affected the income approach value calculation. Therefore, the Board looked to Respondent's Income Model Number 2 for verification of rents and

expenses in the marketplace.

5. The Board focused on the four properties in the model that are pre-1970 buildings. The Board notes that while Respondent's income rate of \$10.00 is at the top of the range, it is still within the rental range for properties similar in age. The Board also notes that Respondent's expense rate of \$4.00 per square foot is solidly located within the expense range of older properties such as the subject. The Board affirms Respondent's rent rate and expense rate. There is no dispute over the vacancy rate or the capitalization rate.

6. The remaining issue in the income approach is the net rentable area of the subject property. Respondent deducted only the interior measurement of the elevator and not the entire area of the elevator shaft. The stairwells appear to be slightly larger on the architectural drawing than the measurements used by Respondent. There are also air plenums and an area of dead-space that are not deducted from Respondent's rentable area calculation. Therefore, the Board used the net rentable area of 15,680 square feet as calculated by Petitioner.

7. After careful consideration of all the evidence and testimony presented, the Board concluded that the 1999 and 2000 actual value of the subject property should be reduced to \$550,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 1999 and 2000 actual value for the subject property of \$550,000.00.

The Jefferson County Assessor is directed to change his records accordingly.

APPEAL:

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

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

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 16th day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

JUL 16 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

