

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FLORIDA SHERWOOD FOREST, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941</p>	<p>Docket Number: 41002 and 41168</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 11, 2003, Karen E. Hart and Steffen A. Brown presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Michelle B. Gombas, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**103 Centennial Boulevard, Highlands Ranch, Colorado
(Douglas County Schedule Nos. 0332782, 0402300, 0378739)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2001 and 2002. The subject property consists of a movie theater complex containing 24 screens and two parking lots.

ISSUES:

Petitioner:

Petitioner contends that the subject property, a movie theater, is a Class C building, but that it is only of average, not good, quality. Because personal property is included in the Marshall and Swift cost manual, fixtures must be excluded. Respondent's income approach includes comparable sales that were sale-leasebacks or build-to-suit and this is a problem since they involve personal property, both tangible and intangible. Respondent's market approach also includes personal property.

Respondent:

Respondent contends that the subject is a 24-screen megaplex cinema in good condition. It sold in 1999 and was then leased back. The sale amount was \$26,000,000.00 and no personal property was included in the sale. There is a valid lease and all of the personal property is owned by the lessee.

FINDINGS OF FACT:

1. The Board granted a motion to consolidate Docket Numbers 41002 and 41168. Docket No. 41002 is an appeal for tax year 2001 and consists of Account No. R0332782, a 3.896-acre parcel parking lot with improvements and Account No. R0402300, a 9.670-acre parcel with the building improvement. Docket No. 41168 is an appeal for tax year 2002 and consists of Account Nos. R0332782, R0402300 and R0378739, a 6.950-acre parcel parking lot with improvements.

2. Petitioner's witness, Mr. Todd A. Stevens, a Registered Appraiser, described the subject property as a theater and parking lot, plus two separate parcels used as parking lots. The theater has 24 screens with stadium-style seating and was constructed in 1998. Due to the limited parking, the subject has a pedestrian bridge from the upper parking lots to the theater. The building contains two elevators and escalators, and a vestibule with minimal finish. There is little ceiling finish throughout the building. Therefore, the property should be classified as Class C, Average. There are three concession stands, an interior office, computer-controlled HVAC, and computer and projection rooms. Mr. Stevens testified that the concession stands, electronic games, seating, computer-controlled HVAC, projection equipment, screens and sound system are all personal property.

3. Mr. Stevens discussed the Business Enterprise Value shown on page 7 of Petitioner's Exhibit A. He testified that the movie theater is the core business, and included are the licensing, food and ticket sales critical to the business, which are intangibles. When the agreement goes away, so does the theater. Mr. Stevens cited examples, such as the Park Meadows and Festival theaters, which are now retail stores. The subject was built by AMC Theaters and sold on October 22, 1999 for \$26,000,000.00. The sale included not only real property, but also the income stream (Business Enterprise Value) and personal property.

4. Petitioner's witness presented the following indicators of value:

Market:	\$ 6,142,080.00
Cost:	\$11,870,966.00
Income:	None

5. Based on the market approach, Petitioner's witness presented an indicated value of \$6,142,080.00 for the subject property.

6. Petitioner's witness presented two comparable sales ranging in sales price from \$1,100,000.00 to \$2,250,000.00 and in building size from 25,690 to 36,319 square feet. After adjustments were made, the sales ranged from \$1,595,092.00 to \$2,812,543.00, correlated to \$70.00 per square foot or \$6,142,080.00 for the subject building.

7. Mr. Stevens testified that Petitioner's Comparable Sale 1 is an old AMC theater located at 4120 E. Alameda Avenue. It is a smaller building containing six theaters, has a lower land-to-building ratio, a parking garage and a superior location. Comparable Sale 2 is located at 2220 Chambers Road and was under contract during the base period. It is an older building with an inferior location, was vacant at the time of sale, has a lower land-to-building ratio and is in a shopping center. Personal property was not removed and no licensing agreement was included in the sales price.

8. As to the sales shown in Respondent's Exhibit 1, pages 17 and 18, Mr. Stevens testified that Comparable Sale 1 was not a listed sale and he thinks it was an in-house transfer. Comparable Sale 2 was a sale-leaseback and not on the open market. Comparable Sale 3 was a sale-leaseback, not on the open market and located in California. Comparable Sale 4 was a build-to-suit, not on the open market, included other tenants and located in California. Comparable Sale 5 was a build-to-suit, not on the open market and located in Florida.

9. Mr. Stevens discussed the issue of equalization found in Addendum A of Petitioner's Exhibit A. He testified that he had talked to other counties regarding the valuation of movie theaters and that the analysis in Petitioner's Exhibit A, page 45, shows that Douglas County is high compared to other counties.

10. Mr. Stevens placed most weight on the Market Approach and the equalization analysis and concluded to a value of \$7,000,000.00.

11. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$11,870,966.00.

12. Mr. Stevens presented four land sales, which included the subject property, in Petitioner's Exhibit A, pages 32 and 33. He testified that he did not see any market appreciation. Sales 1, 2 and 3 were adjusted 10% since they were smaller parcels. The adjusted price ranged from \$5.22 to \$5.64 per square foot and he gave most weight to the subject at \$5.22 per square foot or \$4,665,902.00, which includes all 20.52 acres (893,851 square feet).

13. Mr. Stevens testified that he used the Marshall and Swift Cost Calculator that was time trended back to June 30, 2000, shown in Petitioner's Exhibit C, pages 34 through 38A. He

gave the building a 45-year life with an effective age of 2 years, which is a 4.4% physical depreciation factor. He applied a 30% economic depreciation to the subject even though the market could support a 40 – 50% economic factor based on the sale of theaters that were no longer used as theaters. It was Mr. Stevens’ opinion that a 10% adjustment should be made for the functional obsolescence, which includes the land bridge and parking layout since the majority of the parking is far away from the building.

14. Mr. Stevens testified that he chose average quality construction and good condition to calculate a basic cost of \$65.00 per square foot. He included 5% for stadium seating, \$1.75 per square foot for the sprinkler system, plus various multipliers to arrive at a replacement cost new of \$105.91 per square foot plus escalators and elevators factored back to June 2000. To this figure he added the pedestrian bridge at \$594,559.45, the mezzanine at \$528,675.85, the vestibule at \$254,336.35, miscellaneous yard items of \$807,296.26 and land at \$4,665,902.00 for a total depreciated cost of \$11,870,965.75.

15. Petitioner’s witness did not consider the income approach since lease data would include significant amounts of intangibles and personal property.

16. In cross-examination, Mr. Stevens testified that the entry ceilings are bare-bones steel sheeting; that there is no heat in the vestibule; and that the lobby ceilings have some ornamentation, but the majority are plain. As to personal property, the Douglas County Assessor says it equals \$5,000,000.00 and is owned by AMC who files a separate personal property declaration. The pedestrian bridge causes a longer walk than would be typical. The lease includes AMC’s good faith – if not, the rent could not be paid. He agreed that the equalization analysis is not an approach to value.

17. Petitioner is requesting the following values for tax year 2001:

<u>Account #</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>
R0332782	\$ 885,886.20	\$ 182,649.98	\$1,068,536.18
R0402300	\$2,198,794.50	\$1,827,274.55	\$4,026,069.05
		2001 Total Value	\$5,094,605.23

Petitioner is requesting the following values for tax year 2002:

<u>Account #</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>
R0332782	\$ 885,886.20	\$ 182,649.98	\$1,068,536.18
R0402300	\$2,198,794.50	\$1,827,274.55	\$4,026,069.05
R0378739	\$1,580,313.24	\$ 325,081.53	\$1,905,394.77
		2002 Total Value	\$7,000,000.00

18. Respondent's witness, Mr. Larry Shouse, a Certified General Appraiser with the Douglas County Assessor's Office, presented the following indicators of value:

Market:	\$25,500,000.00
Cost:	\$23,045,780.00
Income:	\$23,172,039.00

19. Based on the market approach, Respondent's witness presented an indicated value of \$25,500,000.00 for the subject property.

20. Respondent's witness presented five comparable sales ranging in sales price from \$16,100,000.00 to \$26,000,000.00 and in size from 73,637 to 106,954 square feet, or \$891,089.00 to \$1,083,333.00 per screen. No adjustments were made to the sales.

21. Mr. Shouse testified that the subject is located in Highlands Ranch at Broadway and C-470 and includes three parcels. The personal property is owned by AMC Theaters and is not included in the real property value.

22. Mr. Shouse testified that Respondent's Comparable Sale 1 is the subject property; Comparable Sale 2 is located in Colorado Springs and he relied on Co Star Comps for sales data since he could not confirm the details; Comparable Sales 3, 4 and 5 were out of state and used as a check for reasonableness. The sales equated to \$240.00 per square foot or \$1,050,000.00 per screen. None of the sales involved a change in use, which was the case with Petitioner's comparable sales.

23. Mr. Shouse concluded to a value of \$25,000,000.00, which is less than the sales price of the subject in October 1999. According to the TD 1000, the sale did not include personal property.

24. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$23,045,780.00.

25. Mr. Shouse testified that he used four land sales shown in Respondent's Exhibit 1, page 11. He described each as multiple parcels and made qualitative adjustments for market conditions, size and location. He gave most weight to Comparable Sale 1 to conclude to a land value of \$6.50 per square foot, or an indicated land value for the subject of \$5,808,900.00, which includes all 20.516 acres (893,677 square feet).

26. Mr. Shouse testified that the subject is a good quality design based on Marshall and Swift Valuation Services. He described the subject property as state-of-the-art with a drop ceiling in the mezzanine. The lobby has ornamental appointments, the lighting is appropriate for a theater, and he believes the pedestrian bridge enhances the building and should not be considered functional obsolescence.

27. Mr. Shouse calculated the costs shown in Respondent's Exhibit 1, pages 15 and 16, and testified that the big value differences between the parties were the estimates of economic and functional obsolescence. Mr. Shouse testified that functional obsolescence is caused by an over-improvement or deficiency within the property and that he did not believe the pedestrian bridge caused obsolescence. As to external obsolescence, Mr. Shouse testified that AMC Theaters is an on-going business and that they provided attendance, income and expenses. They are ranked second in

the industry and the subject location is thriving, even though the industry may not be. He finds no sources to external obsolescence. Since the subject was built in 1998 and is in good condition, Mr. Shouse estimated the life of the improvement to be 40 years with an effective age of two years as of the date of value. Based on good condition, the physical depreciation was estimated at 5%.

28. Respondent's witness used the income approach to derive a value of \$23,172,039.00 for the subject property.

29. Mr. Shouse testified that he used the existing lease, which does not include personal property, since this would be considered by a potential purchaser. He does not believe that there is a business value to the property owner in the lease, only that there is a good strong tenant.

30. Mr. Shouse used a rental rate of \$27.02 per square foot, a vacancy rate of 1%, and expenses at 3% to arrive at a Net Operating Income (NOI) of \$2,317,204.00. Mr. Shouse used an averaged capitalization rate of 10% from the market, which indicated a value of \$23,172,039.00 based on the income approach.

31. In cross-examination, Mr. Shouse testified that the pedestrian bridge has a contributory value in the cost approach; but for the market approach, it could have little contributory value. In calculating the cost approach, Mr. Shouse used replacement costs. As to time trending land sales, Mr. Shouse used a qualitative adjustment rather than a quantitative adjustment. He testified that the whole lobby area ceiling amounted to less than 5% of the building area. He made no adjustments to the Marshall and Swift cost figures for part of the sound system, which is personal property. He used factors from Marshall and Swift for differences in ceiling heights throughout the building. Mr. Shouse testified that transactions for theaters are typically based on leaseback or build-to-suit and he agrees that a relationship exists between the market sale and lease price.

32. In re-direct, Mr. Shouse testified that the bridge provides alternative pedestrian access to get to the main building. The average to good classification from Marshall and Swift includes the built-in sound system. Mr. Shouse testified that Petitioner's sales were converted to a fitness center or church, whereas Respondent's sales were theater use.

33. In rebuttal, Mr. Stevens testified that land Sale 1 was the best sale, but that it fronts C-470 whereas the subject does not, and that the other sales are in major retail areas. He believes sales are flat and that no time trending is necessary. His economic obsolescence of 30% does not have anything to do with the subject, but with the general movie theater industry.

34. Respondent assigned a combined actual value of \$26,000,000.00 for all three subject property parcels for tax years 2001 and 2002, but is recommending the following reduction in value for tax year 2001:

<u>Account #</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>
R0332782	\$1,103,115.00	\$ 188,750.00	\$ 1,291,865.00
R0402300	\$2,737,963.00	\$16,662,599.00	<u>\$19,400,562.00</u>

2001 Total Value \$20,692,427.00

Respondent is recommending the following reduction in value for tax year 2002:

<u>Account #</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>
R0332782	\$1,103,115.00	\$ 188,750.00	\$ 1,291,865.00
R0402300	\$2,737,963.00	\$16,662,599.00	\$19,400,562.00
R0378739	\$1,967,823.00	\$ 339,750.00	<u>\$ 2,307,573.00</u>
		2002 Total Value	\$23,000,000.00

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property was incorrect for tax years 2001 and 2002.

2. The interior and exterior of the subject were adequately described, including pictures presented by Petitioner and Respondent. The Board concurs that the subject is a Class C building based on Marshall and Swift. The main issue between the parties is whether the subject is an average or good type since there is a cost difference of about \$25.00 per square foot. The Board reviewed all of the evidence and testimony and believes that the subject has some features of both types and that the cost per square foot is somewhere in between.

3. Petitioner placed most weight on the market approach and equalization analysis. The Board notes that only two sales were presented and that both were vacant at the time of sale. In addition, they were significantly smaller in size and older in year of construction than the subject, which makes adjustments more difficult to support. The Board could give little weight to this analysis. Although the Board may consider equalization, the Board does not know if the values assigned by the respective counties are correct. Respondent's sales included the subject, plus four other sales outside of the Denver metro area, which were used as a test of reasonableness. The Board was not convinced, due to the lack of a more thorough analysis of the different locations, quality of construction, geographic area and possible land values differences, that the comparison to the subject can be adequately supported.

4. While Petitioner did not present an income approach due to the lack of lease data without personal property, Respondent did consider the approach because of the subject's current 20-year lease. The Board reviewed Respondent's income approach, but could give it little weight since there was limited support for the income and operating expenses.

5. The subject is a special use property. The Board believes that, due to its recent date of construction and good condition of the improvements, the cost approach is the most appropriate method of valuation.

6. The Board reviewed the evidence and testimony regarding market trends for vacant land, and is convinced that market conditions were favorable from the dates of sale through June 30, 2000. Even though Petitioner testified to no appreciation, he alluded to a positive market in his presentation of the overall economy up to 2000. The Board was most persuaded by Respondent's vacant land sales since they are more similar in overall size, and believes that \$6.50 per square foot for the subject land is appropriate.

7. The Board carefully reviewed costs presented by Petitioner and Respondent, and with the exception of the basic cost difference, finds them to be similar. The major difference between Petitioner and Respondent are the estimates of economic and functional obsolescence. The Board was not persuaded by Petitioner's estimate of economic obsolescence at 30% since it was based on movie theaters that were no longer movie theaters, as well as general industry-wide data and was not specific with regard to the subject. The Board would have preferred to see historical data from the subject, such as ticket sales or other income data to show a decline. In addition, the Board was not convinced of the functional obsolescence due to the pedestrian bridge. The bridge would appear to enhance the subject by allowing patrons to access the theater over a street rather than crossing a road to enter the building.

8. The Board has carefully reviewed all of the evidence and testimony with regard to the sound system as personal property. Petitioner testified that the sound system was included in the Marshall and Swift cost manual, but there was insufficient information provided in order to determine if an adjustment was warranted.

9. The Board re-calculated cost estimates from both Petitioner and Respondent, using the mid-point between Petitioner's and Respondent's base costs as shown in Marshall and Swift, which would be about \$75.00 per square foot. Other costs for the entry/vestibule, mezzanine, bridge, site improvements, multipliers and depreciation were similar for both. The other main differences are the estimate of land value, and economic and functional depreciation.

10. Based on all of the evidence and testimony presented, the Board concluded to the following:

2001 Actual Value:

Account No. R0332782	Land	\$1,103,115.00
	Improvements	<u>\$ 185,700.00</u>
	Total	\$1,288,815.00

Account No. R0402300	Land	\$ 2,737,963.00
	Improvements	<u>\$14,927,064.00</u>
	Total	\$17,665,027.00

Grand Total		\$18,953,800.00/Rounded
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2002 Actual Value:

Account No. R0332782	Land	\$1,103,115.00
	Improvements	<u>\$ 185,700.00</u>
	Total	\$1,288,815.00

Account No. R0402300	Land	\$ 2,737,963.00
	Improvements	<u>\$14,927,064.00</u>
	Total	\$17,665,027.00

Account No. R0378739	Land	\$1,967,823.00
	Improvements	<u>\$ 332,416.00</u>
	Total	\$2,300,239.00

Grand Total		\$21,254,000.00/Rounded
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ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property of \$18,953,800.00 and a 2002 actual value for the subject property of \$21,254,000.00.

The Douglas County Assessor is directed to change her 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 6th day of February, 2004.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Steffen A. Brown

Steffen A. Brown

This decision was put on the record

FEB 06 2004

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

