BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **1ST BANK OF COLORADO NA,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: Richard G. Olona, Esq. Olona & Associates, P.C. Address: 7472 S. Shaffer Lane, #130 Littleton, Colorado 80127 Phone Number: (303) 433-1699 Attorney Reg. No.: 17940	**Docket Number: 41584**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on February 25, 2005, Rebecca A. Hawkins and Karen E. Hart presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Kelly Dunnaway, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

400 S. Wilcox, Castle Rock, Colorado
(Douglas County Schedule No. R0436688)

The subject property is a commercial bank building built of masonry construction in 1998. The one story building is approximately 7,502 gross square feet in size and is situated on a 2.249-acre site.

ISSUES:

Petitioner:

Petitioner contends that Respondent improperly included personal property in the valuation of the real property. Respondent included a comparable that was not a sale of real property but a sale of the bank business.

Respondent:

Respondent contends that personal property was not included in the valuation of the subject. The primary issue is the exclusion of the personal property in the income approach.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Jeffrey M. Monroe, a Registered Appraiser with Tax Profile Services, presented the following indicator of value:

Income: $1,000,000.00

2. Mr. Monroe testified that the subject property was built in 1988 and is not a typical branch bank. There are super adequacies due to the subject building's size, which is larger than usual. Every year he files a complete asset report on the Personal Property Declaration Schedule. The business fixtures are listed separately for the Declaration. Marshall & Swift includes bank business fixtures in their cost tables for bank buildings. First Bank buildings have few interior walls; the walls that do exist are movable and are declared on the Personal Property Declaration Schedule. The subject is unique in its size and drive-up facility.

3. Mr. Monroe testified that the fire suppression system, security system, teller lines, and repository are banking fixtures that should be excluded from the subject property value. In the income approach, Mr. Monroe used a bank rental rate of $20.00 per square foot, a 5% vacancy rate, a 4% expense rate, and a 9% capitalization rate. He removed expenses related to the return on and return of business fixtures. He used bank rental rates, but none of his rental rates were bank leasebacks. The expense and capitalization rates are the same as those presented by the Respondent at the CBOE hearing.

4. Mr. Monroe testified that the main difference between Petitioner's and Respondent's income approaches is the return on and return of personal property. Respondent utilized a different expense ratio than is typically used. Recalculating Respondent's income approach to remove return of and return on results in a value of $1,313,631.00, which is less than the assigned value.

5. Mr. Monroe testified that one of Respondent's sales should be eliminated, as it is a business sale and not a real property sale. The remaining sales would indicate a market value of $140.52 per square foot, which when multiplied by the subject's gross square footage of 7,502

results in a value of $1,054,181.00. His recalculation of Respondent's income and sales comparison approaches results in a value of $1,300,000.00.

6. Petitioner is requesting a 2003 actual value of $1,000,000.00 for the subject property.

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

Market:	$1,410,400.00
Cost:	$2,085,152.00
Income:	$1,637,312.00, corrected to $1,539,099.00

8. Based on the market approach, Respondent's witness presented an indicated value of $1,410,400.00 for the subject property.

9. Respondent's witness presented five comparable sales ranging in sales price from $120.37 to $304.43 per square foot and in size from 3,679 to 17,862 square feet. Qualitative adjustments were made to the sales.

10. Mr. Shouse testified that bank sales are difficult to locate; he looked for sales throughout the front-range. Only one bank sale occurred during the 18-month base period and it was located in Boulder. He expanded the sale date range to July 1999 and located four additional comparable sales. Sale 5 was most similar to the subject but included personal property. The remaining sales were considered inferior to the subject; the sales did not indicate any personal property was included in the sales price. Sale 4 had some office area. He believes the subject property's value should fall within a range of $160.00 to $304.00 per square foot. Considering the good location of the subject, he concluded to a value of $200.00 per square foot, or $1,410.000.00.

11. As a test of reasonableness, Mr. Shouse also examined the sale of a former First Bank property that was converted to retail and office occupancy. He believes that the subject property could also be converted to a retail and/or office facility. He then looked at five office rental properties at $18.83 per square foot and five retail stores at $20.22 per square foot. Using a rental rate of $20.00, the indicated value would be $1,368,088.00, which he believes supports his value conclusion.

12. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $2,085,152.00.

13. Mr. Shouse testified that the land value was determined to be $12.00 per square foot, for a total site value of $1,175,592.00. Using Marshall & Swift Cost Service, the replacement cost new less depreciation for the building resulted in a value of $909,560.00. He confirmed with Marshall & Swift that the cost per square foot for the bank building excluded personal property business fixtures. The subject building was built in 1998 and has not depreciated much. Therefore, he believes that the cost approach is a good indicator of value for the subject.

14. Respondent's witness used the income approach to derive a value of $1,539,099.00 for the subject property.

15. Mr. Shouse testified that the Arapahoe County Assessor's Office provided the comparable bank rental rates shown on page 30 of Respondent's Exhibit 1. The rental rates for Comparables 1, 3, and 5 were confirmed to be for real estate only and were given the most weight. The subject is a corner lot in a high profile location on the southern end of the Town of Castle Rock. Mr. Shouse concluded to a rental rate of $22.50 per square foot. In a triple net lease, the landlord/owner incurs minimal expense and risk, as the tenant is responsible for all expenses. Mr. Shouse's capitalization rate data was derived from known bank sales and from the Integra Realty Resources *Real Estate Investment Survey – Winter 2002/2003*. The capitalization rates ranged from 9% to 11%. He applied a 9.5% capitalization rate to the subject property.

16. Mr. Shouse placed the greatest weight on the income approach, with additional consideration given to the cost approach due to the relatively new construction of the subject. The sales comparison approach was the weakest of the three approaches. Mr. Shouse concluded to a value of $1,650,000.00 for the subject property for tax year 2003.

17. Mr. Shouse believes that Petitioner's expense ratio is too high, as there is only a nominal expense to the landlord for some management and reserves.

18. Under cross-examination, Mr. Shouse testified that Sale 5, which appears to be an outlier, established the high range and he did not give it as much weight as the other sales. He gave most weight to Comparable Sale 1. His Sale 4 is a multi-tenant building. Sale 5 was a sale from one bank to another – he had no indication that the business value was included in the sales price. If business value were included in the sales price, the sales price would require an adjustment. He did not independently confirm all of the comparable sale prices.

19. Mr. Shouse testified that he relied on Mr. Steve Sneddon, Senior Appeals Supervisor with the Arapahoe County Assessor's Office, for the confirmation of the rental rates. Mr. Shouse made no independent confirmation of the rents. If any of the rental rates were sale-leasebacks, that should be considered. He did not make a deduction for personal property in the income approach. He believes that the $22.50 per square foot rental rate is for real property only. The personal property is owned by the lessee, including the teller lines. None of the rental properties are located in the Castle Rock area. The expense rate applied in the income approach is for management fees and minimal reserves. In a triple net lease, the tenant is usually responsible for building maintenance. Mr. Shouse admitted that Page 37b of Respondent's Exhibit 1, a page from the Marshall & Swift Cost service, indicates that the typical cost of bank fixtures is 11% to 28% of the structure cost. However, he did not give this any consideration, as those fixtures would have been add-on items to his cost value calculation.

20. In redirect, Mr. Shouse testified that none of the five comparable sales are truly similar to the subject, which is why he considers it the least reliable approach. Sale 4 is much larger than the subject and Sale 5 is much smaller than the subject. The price per square foot of these sales reflects the economy of scale theory: smaller properties sell for higher amounts per square foot.

21. Respondent assigned an actual value of $1,405,106.00 to the subject property for tax year 2003.

22. In rebuttal, Mr. Monroe testified that the 11% to 28% personal property costs are included in the Marshall & Swift building costs. Respondent's Sale 4 was a leaseback sale; US Bank transactions are only leaseback situations. Regarding sales, even bank buildings that are later remodeled must have the sales price adjusted for the drive-up, vault and other remaining bank items.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. The Board agrees that the Respondent's sales comparison approach is weak. Petitioner's argument that Sale 5 should not be considered was persuasive. This sale is clearly an outlier. The exclusion of Sale 5 results in a value range of $120.37 to $160.67 per square foot. The subject is a fairly new building in a good location. Using $160.00 per square foot, the upper end of the range indicated by the sales comparison approach, results in a value of $1,200,320.00. However, the Board notes that all of the comparables were inferior to the subject and that the subject's value is likely somewhat higher than this value conclusion.

3. Regarding the cost approach, the Board was persuaded that the Marshall & Swift tables do include certain personal property business fixtures. We believe that Respondent's cost approach should be reduced for these fixtures. Using Marshall & Swift's cost range reduction of 11% to 28% for banking fixtures results in a cost value range of $1,836,847.00 to $1,986,513.00. This approach clearly results in the upper level of value and is much higher than the other two approaches. For these reasons, and the fact that a potential purchaser would likely give little weight to the cost approach, it was given the least amount of weight by the Board.

4. Regarding the income approach, the Board was persuaded that Respondent's rental rate of $22.50 per square foot would include some income attributable to banking fixtures. We were persuaded that Respondent's alternate rental rate of $20.00 per square foot, which was derived from office buildings and would not include banking fixture income, was more appropriate. There was no disagreement in the vacancy rate of 5%. We also agree with Respondent that the landlord's expenses should be minimal in a triple net lease and affirm Respondent's 3% expense rate, as well as Respondent's 9.5% capitalization rate. The Board agrees with Respondent's alternate income approach conclusion as shown in Exhibit 2 at $1,368,088.00.

5. Giving most weight to the income approach, with secondary weight to the sales comparison approach, the Board concluded that the 2003 actual value of the subject property should be reduced to $1,300,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $1,300,000.00.

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

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 31st day of March 2005.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca A. Hawkins

Karen E. Hart

Karen E. Hart

This decision was put on the record

MAR 30 2005

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

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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