

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>1ST BANK OF COLORADO,</p> <p>v.</p> <p>Respondent:</p> <p>BROOMFIELD COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney for the Petitioner:</p> <p>Name: Richard G. Olona, Esq. Olona & Associates, PC</p> <p>Address: 7472 S. Shaffer Lane, Suite 130 Littleton, Colorado 80127 Phone Number: (303) 433-1699</p> <p>Attorney Reg. No.: 17940</p>	<p>Docket Number: 41590</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 30, 2003, Karen E. Hart, Steffen A. Brown, and MaryKay Kelley presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Tami Yellico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1180 Highway 287, Broomfield, Colorado
Broomfield County Schedule No. 01141957**

Petitioner is protesting the 2003 actual value of the subject property, a branch bank located in the Broomfield Marketplace Shopping Center.

ISSUES:

Petitioner:

Petitioner contends that business fixtures, including the night depository, security system, fire suppression system, and teller lines, but not the rear cabinets, are personal property tied to the operation of a business but were not appropriately adjusted by Respondent.

Respondent:

Respondent contends that the night depository, security system, and fire suppression system are considered personal property but that the front and rear teller lines and the cabinets should be valued as real property.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Jeffrey M. Monroe of Tax Profile Services, Inc., testified that the night depository, fire suppression system, security system and teller lines are tied to the operation of a business and thus are personal property. He testified that the teller back, described as cabinetry, was included in the bank's fixed asset report, and because he could not separate it from the building structure, he considered it real property. He referenced *Del Mesa Farms v. Montrose County Board of Equalization* (97CA0686) in which the Court of Appeals found that a particular item tied to a business operation constitutes personal property and he contends that adjustments for personal property should be calculated in the income approach. He also referenced the case of *First Bank of Colorado Corporation v. Jefferson County Board of Equalization*, a 2001 tax year personal property case in which the BAA concluded that the night depository, teller lines and fire alarm system were tied to the business operation and were, therefore, personal property.

2. Mr. Monroe testified that because the cost approach is not applicable for banks, it was not included in his report. The market approach was not included because of difficulty in delineating business fixtures from comparable sales and because most market sales involved purchases by large banks with subsequent leasebacks, making selling prices subjective and unreliable.

3. Mr. Monroe presented an income approach using a \$23.00 per square foot rental rate for 4,350 square feet, 5% vacancy and collection allowance, and 10% expenses, equaling a net operating income of \$85,542.75. He testified to a capitalization rate of 9.5%, equaling \$900,450.00, and then deducted a return of business fixtures of \$125,000.00, reconciling to a rounded income approach of \$775,450.00. He also reported a \$15,000.00 return on business fixtures in his income approach but made no deduction for it.

4. Mr. Monroe testified that the \$125,000.00 return of business fixtures was estimated by a construction company and supported by Marshall & Swift's estimate of 25-30% of cost new reflecting business fixtures.

5. Petitioner is requesting a 2003 actual value of \$775,450.00.

6. Respondent's witness, Mr. John Storb, a Certified General Appraiser with the Broomfield County Assessor's Office, testified that the fire suppression system, security system, and night depository are considered personal property necessary to the operation of a business and are being taxed as such. However, the teller lines are considered real property, would likely be removed by a new tenant in order to establish a new identity and image, and are part of the real estate of the bank.

7. Mr. Storb presented the following indicators of value:

Market:	\$ 962,500.00
Cost:	\$1,241,820.00
Income:	\$ 985,908.00

8. Based on the market approach, Respondent's witness presented an indicated value of \$962,500.00 for the subject property.

9. Mr. Storb presented one comparable sale that sold during the base period for \$1,250,000.00 at a price per square foot of \$227.27, which calculated to \$962,500.00 for the subject's 4,235 square feet. He presented two older sales at \$740,000.00 and \$1,170,000.00 bracketing the subject but assigned greatest weight to the base period sale.

10. Mr. Storb used the cost approach based on Marshall & Swift to derive a value of \$1,241,820.00, which included improvements of \$540,320.00 and land of \$701,500.00. He testified that Marshall & Swift included 11% to 28% in the improvements figure for personal property related to bank fixtures. He also considered actual costs of \$1,050,655.00 for improvements supplied by Petitioner's agent, testifying that this figure included items related to the subject bank identification. He disagreed with Petitioner's contention that he should have deducted personal property from his cost approach, saying it is not a proper deduction in a real property appraisal.

11. Mr. Storb used the income approach to derive a rounded value of \$986,000.00 for the subject property.

12. Mr. Storb used a rental rate of \$24.00 per square foot for 4,235 square feet of building space, vacancy and collection loss of 3%, expenses of 5%, and a capitalization rate of 9.5%.

13. Mr. Storb testified that his \$24.00 per square foot rental rate estimate includes bank-specific construction, architecture, and some fixtures that make it different from general commercial properties. Teller lines are considered real estate and are included in the rental rate estimate. He testified that a bank rental rate is higher than general commercial space because a bank has a specific architectural image and that the building owner wants a return on both the construction and the

image itself.

14. Mr. Storb disagreed with Petitioner's \$125,000.00 adjustment for return of business fixtures in his income approach, saying that it is neither accepted appraisal practice nor supported by the Division of Property Taxation.

15. Mr. Storb concluded to a value of \$975,000.00, giving most weight to the market and income approaches.

16. Respondent's witness, Ms. Donna L. Neading, a Personal Property Appraiser with the Broomfield County Assessor's Office, testified that the subject bank's night depository, security system, and fire suppression were included in the personal property tax roll.

17. Respondent assigned an actual value of \$987,820.00 to the subject property for tax year 2003.

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 is persuaded that the night depository, security system, fire suppression, and teller lines and backs are tied to the business operation of a bank and should be considered personal property. As indicated in *Del Mesa Farms v. Montrose County Board of Equalization* (97CA0686), "a distinction must be drawn for classification purposes between items that are related to the operation of a building in general and items that are related to the operation of a business in the building." Thus, in the Board's view, 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."

3. The Petitioner did not present a market approach and the Board is reluctant to place any reliance on Respondent's market approach, as one sale is not a reliable representation of the marketplace. The Petitioner did not present a cost approach and the Board places no reliance on Respondent's cost approach because it did not address the issue of personal property. The Board believes that certain bank business fixtures are included in the cost tables, requiring adjustments to get to the real property value only for ad valorem purposes.

4. The Board relied on the income approaches presented by both parties and was convinced that Petitioner's deductions for return of and return on business fixtures were correctly applied. Respondent made no adjustment to the income stream for income attributed to business fixtures.

5. After careful consideration of all of the testimony and evidence presented, the Board determined that the 2003 actual value of the subject property should be reduced to \$775,450.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$775,450.00.

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

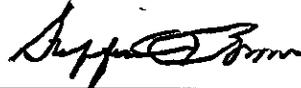
APPEAL:

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 30th day of June 2004.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown



Karen E. Hart

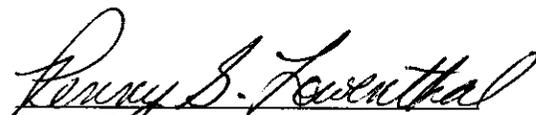


MaryKay Kelley

This decision was put on the record

JUN 29 2004

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



Penny S. Lowenthal

