BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **BAYLOR PROPERTIES LLLP AND BAYLOR PROPERTIES LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 42095 and 44062**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 6, 2006, Sondra Mercier and Karen E. Hart presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2003 and 2004 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

6415 – 6455 Business Center Drive, Littleton, Colorado
(Douglas County Schedule No. 2231-052-04-006/Account No. R0388765)

The subject property consists of a 108,970 square foot single tenant, one-story office building on a 9.913-acre site.

FINDINGS OF FACT:

1. The subject property is located in a retail area near C-470 and Quebec Street. There is no direct access to or visibility of the subject property from Quebec Street, as it is located on a dead end street. The subject building was constructed in 1995 as a big box retail store with three tenants. As of January 1, 1997 the property was vacant. The subject building remained vacant until MCI World Com completed their tenant remodel or until January 1, 1998, whichever date was later. When MCI leased the property, it was remodeled. New windows were added, interior walls were

removed, and conference rooms and a few offices were constructed. The remainder of the building consists of a call center with a huge bullpen area. The subject property is not comparable to a typical office building.

2. Petitioner presented the following indicators of value:

Market:	$8,480,000.00
Cost:	$8,849,804.00
Income:	$7,325,925.00

3. Respondent presented the following indicators of value:

Market:	$11,878,000.00
Cost:	$11,743,000.00
Income:	$12,081,000.00

4. Both parties prepared and considered the cost approach; however, both agreed that little weight should be given to this approach. The Board concurs.

5. Based on the market approach, Petitioner presented an indicated value of $8,480,000.00 for the subject property.

6. Petitioner presented two comparable sales ranging in sales price from $49.02 to $133.53 per square foot and in size from 85,935 to 101,992 square feet. After adjustments, the sales ranged from $75.50 to $100.15 per square foot. Due to the unique nature of the subject property (a retail big box store remodeled into office space) the Board gave little weight to this approach, as the sales presented were not comparable to the subject.

7. Based on the market approach, Respondent presented an indicated value of $11,878,000.00 for the subject property.

8. Respondent presented 10 comparable sales ranging in sales price from $96.00 to $189.00 per square foot and in size from 20,894 to 132,152 square feet. Respondent considered Sales 1, 2 and 3, with sales prices ranging from $108 to $111.00 per square foot to be most similar to the subject. Respondent concluded to a value of $109.00 per square foot for the subject property. Respondent gave no weight to this approach in its final value determination. The Board gave little weight to this approach as none of Respondent's sales were comparable to the subject for the following reasons: Sales 1 and 9 were bulk sales, Sale 2 was superior to the subject and was a build-to suit-building, Sale 3 consists of two, two-story multi-tenant buildings, Sales 4 and 5 have lease rates much higher than the subject, Sale 6 transacted between related parties, Sale 7 is a medical building, Sale 8 was not exposed to the open market and was a 1031 exchange, and Sale 10 had a long-term lease in place at a substantially higher rate than the subject and was a build-to-suit building.

9. Respondent gave some consideration to the actual sales price of the subject property. The Board does not consider the actual sales price to be relevant for the following reasons:

- The sale occurred prior to the 18-month base period
- The sale occurred prior to the marketing changing events of September 11, 2001
- The subject property experienced a change in use and was remodeled after the sale.

10. Both parties indicated that the most reliable indicator of value is the income approach. The Board agrees. The subject property should be valued using leases entered into during the base period and should be valued as a fee-simple interest.

11. The subject does not have a long-term lease; it has a 10-year lease with seven years remaining. The tenant, MCI, may cancel the lease after seven years. The subject property has a net rentable area of 106,000 square feet. The actual rental rate is $11.75 per square foot and the lease was entered into prior to the base period. The tenant occupies half the property, though the entire property is leased.

12. Petitioner presented an income approach to derive a value of $7,325,925.00 for the subject property.

13. Respondent used the income approach to derive a value of $12,081,000.00 based on the actual lease rate for the subject property and a value of $13,295,000.00 based on a market lease rate.

14. Petitioner presented three comparable market leases ranging in rental rates from $6.10 to $13.15 per square foot. All of the leases were let during the base period. All of the buildings are multi-story, superior Class A construction with superior locations and access. Petitioner chose a triple net rental rate of $11.00 per square foot. Respondent compared the subject lease rate of $11.75 per square foot to market leases obtained from confidential records and CoStar data. Respondent determined an appropriate market rental rate should be $12.93 per square foot. The Board could give little weight to Respondent's market rental rate as the properties were not identifiable and the witness could not determine the date the leases were let. Therefore, the Board relied on the $11.00 per square foot rental rate presented by Petitioner.

15. Petitioner chose a vacancy rate of 25% for the subject property based on a review of the Ross report, a neighborhood survey of three large leased spaces, and CoStar. Petitioner's vacancy rate studies included multi-tenant, multi-story properties. Respondent's 5% vacancy rate was unsubstantiated. The vacancy rate should reflect the expected vacancy for the life of the property. As such, the Board determined that a 10% vacancy rate would be more appropriate for the subject as a single tenant office property.

16. Based on surveys, Petitioner used a 3% management fee and a 5% leasing, operating, reserves and replacements expense. Petitioner's expenses include a .5% leasing commission expense, which the Board determined is not an appropriate deduction. Respondent used a 3% expense rate. The Board finds the 3% expense rate to be appropriate for a triple net income pro-forma for a single tenant property.

17. The Integra report indicated a capitalization rate range of 9% to11%, and analyses of sold properties presented by both parties had capitalization rates ranging from 9.0% to 12.00%. Petitioner chose an 11% capitalization rate due to the poor access and location of the subject. Respondent chose a 9.5% capitalization rate. The Board determined that 11% was an appropriate capitalization rate, considering the property's poor access and location.

18. Respondent concluded to a value of $12,081,000.00 for the subject property, based solely on the income approach.

19. Respondent assigned an actual value of $11,160,279.00 to the subject property for tax years 2003 and 2004.

20. Petitioner is requesting a 2003 and 2004 actual value of $7,600,000.00 for the subject property, based primarily on the income approach, with some consideration given to the market approach.

CONCLUSIONS OF LAW:

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuations of the subject property for tax years 2003 and 2004 were incorrect.

2. The Board calculated the income approach using a rental rate of $11.00 per square foot for 106,000 rentable square feet, a 10% vacancy rate, 3% expense rate, and an 11% capitalization rate as indicated in the findings of fact.

3. After careful consideration of all of the testimony and evidence presented, the Board concluded that the 2003 and 2004 actual value of the subject property should be reduced to $9,253,800.00.

ORDER:

Respondent is ordered to reduce the 2003 and 2004 actual value of the subject property to $9,253,800.00.

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 15th day of February 2006.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Karen E. Hart

This decision was put on the record

FEB 15 2006

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

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS