BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **BROOMFIELD VILLAGE ASSOCIATES,** v. Respondent: **BROOMFIELD COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: Kenneth S. Kramer, Esq. Berenbaum Weinshienk & Eason Address: 370 17th Street, Suite 4800 Denver, Colorado 80202 Phone Number: (303) 825-0800 Attorney Reg. No.: 16929	**Docket Number: 42473**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on April 15, 2004, Karen E. Hart and Rebecca Hawkins presiding. Petitioner was represented by Ken Kramer, Esq. Respondent was represented by Tami Yellico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

299 East Flatiron Circle, Broomfield, Colorado
(Broomfield County Schedule No. R1145836)

Petitioner is protesting the 2003 actual value of the subject property, a one-story freestanding building located in Flatiron Marketplace. The 7,078 square foot building was constructed in 2001 on a 1.113-acre site. The subject property includes a bar area and furniture, fixtures and equipment (FF&E) typical of a full-service restaurant. The subject has surface parking for 34 cars as well as shared parking with surrounding retailers. Red Lobster restaurant took occupancy of the building on January 1, 2003. The subject property is under a 10-year net ground lease with four, five-year options.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued for tax year 2003. The market value was affected by external obsolescence, as the restaurant was under-performing due to the economy. An obsolescence figure could be derived through the cost approach since the cost to build exceeds the market value. Respondent's comparable sales are restaurants; however, the appraiser failed to take into account that the sale prices included real estate, leased fee interest, furniture, fixtures and equipment.

Respondent:

Respondent contends that the subject property has been correctly valued for tax year 2003. The subject is in a good location immediately adjacent to Flatirons Mall.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Alfred E. Medina, MAI, and a Certified General Real Estate Appraiser with Integra Realty Resources, presented the following indicators of value:

Market:	$1,700,000.00
Cost:	$1,820,000.00
Income:	$1,710,000.00

2. In support of the market approach, Mr. Medina presented four comparable sales ranging in sales price from $1,000,000.00 to $2,650,000.00 and in size from 4,525 to 8,929 square feet. After adjustments, the sales ranged from $1,049,981.00 to $2,385,025.19 or from $203.89 to $267.11 per square foot. He explained that only one similar sale was available in Broomfield. Other comparable sales were located in Arapahoe and Douglas Counties.

3. Mr. Medina testified that all of Petitioner's comparable sales were restaurants. They required adjustments for location, condition, age, size, FF&E, parking and economic characteristics. Mr. Medina determined that adjustments were unnecessary for financing terms, conditions of sale, seller expenditures, and market conditions. All sales were analyzed based on the price per square foot of gross leasable area. Petitioner's Comparable Sale 1 is the most recent sale. It was a leased-fee interest but did not include FF&E and had minimal business value. Comparable Sale 2 was fee

simple interest, and was sold from one owner-user to another owner-user. Comparable Sale 3 had a similar market and might have been a leased-fee sale. Comparable Sale 4 was fee simple.

4. Petitioner's witness gave most weight to Comparable Sales 1 and 4 as Comparable Sale 1 is the most recent and Comparable Sale 4 required the lowest net adjustments. He believes the applicable unit value for the subject is toward the middle of the range at $240.00 per square foot, resulting in a rounded property valuation of $1,700,000.00.

5. Mr. Medina testified that the marketplace for the subject property was changing during the base period. He believes potential buyers would rely on the sales comparison approach as the best indicator of value.

6. Mr. Medina is familiar with Respondent's comparable sales and believes FF&E and goodwill are included in the sales prices. Goodwill and FF&E would require large adjustments. He testified that Respondent's Comparable Sales 1, 2, 3, 4, 5, 6, 7, 8 and 10 are net leasebacks. Comparable Sale 9 was purchased by an owner-user and Comparable Sale 11 is held in fee simple. The land lease of the subject results in leased fee value.

7. Mr. Medina concluded to a value of $1,820,000.00 based on the cost approach. He presented five comparable land sales ranging in price from $1,300,000.00 to $1,720,000.00 and in size from 0.8218 acres to 2.0920 acres. After adjustments, the indicated values ranged from $749,968.10 to $1,728,698.16 or from $18.97 to $22.08 per square foot. All of the comparable land sales were located in Broomfield and sold for either restaurant or bank use. Mr. Medina reconciled at $20.00 per square foot to indicate a land value of $970,000.00 rounded.

8. Mr. Medina testified that the cost figures came from the Marshall & Swift Valuation Service Commercial Cost Manual. He classified the building as good quality with an effective age of five years and a remaining economic life of 35 years. The figures used were based on a typical restaurant building without any additional consideration for super-adequate tenant improvements or FF&E found in the subject property. The cost estimate does not include functional or external obsolescence. An estimate of 10% was used for indirect construction costs plus 15% for entrepreneurial profit based on the effective date of value. Mr. Medina testified that his replacement cost new for the subject property without land was $1,046,466.00, whereas Darden Restaurants reported $2,085,442.00 in construction costs.

9. Mr. Medina testified that the difference between the market approach and the reproduction cost new reflects the obsolescence. The building has super-adequate tenant improvements that are specific to Red Lobster. The next tenant would likely remove most of the current tenant improvements. Replacement cost new is more appropriate to value the subject than reproduction cost new.

10. Mr. Medina derived a value of $1,710,000.00 for the subject property based on the income approach.

11. Petitioner's witness testified that the subject property was 100% occupied as of January 1, 2003 by an owner-user and is at stabilized occupancy. Lease terms are on a triple net (NNN) basis. To estimate the market rent, Mr. Medina analyzed four rent comparables ranging in size from 7,300 to 11,585 square feet and in base rental rates from $16.50 to $22.50 per square foot. After adjustments were applied for differences in market conditions, lease terms, property characteristics and owner/tenant expense allocations based on current and future vacant space on a NNN basis, the rent comparables ranged from $20.63 to $23.63 per square foot.

12. Rental Comparable 1 is superior to the subject in traffic count and accessibility. Rental Comparable 2 is located in lower downtown near the 16th Street Mall. It is larger in leasable square footage. Rental Comparable 3 is located near the subject property in Broomfield and Rental Comparable 4 has a similar location. Most consideration was given Comparable Rentals 3 and 4 at $22.89 and $23.63 per square foot respectively. Comparable Rental 3 is most similar to the subject property in quality, size and location. Comparable Rental 4 required the least net adjustment. A market rental rate of $23.50 was determined to be appropriate for the subject property.

13. Mr. Medina utilized the following income and expenses:

- A stabilized vacancy and collection loss of 5% to reflect the average risk of vacancy
- Management fees of 2% of the total effective gross income and replacement reserves at $0.10 per square foot
- Operating expenses estimated at $0.55 per square foot
- Use of overall capitalization rates from 10 full service restaurant sales throughout Colorado ranging from 8.14% to 10.50% with an average of 9.18%.
- Capitalization rate sales information supported by investor surveys and the band-of-investment method

14. Six of the 10 restaurant sales are encumbered by long-term leases, which tend to lower the overall risk. These six sales were either International House of Pancakes or Village Inn restaurants, highly sought after and publicly traded restaurant operators. A capitalization rate of 9% applied to the net operating income of $154,148.00 indicates a stabilized value of $1,712,758 or $1,710,000.00 rounded.

15. Under cross-examination, Mr. Medina testified that the subject property does not have very good visibility and that the ZIP shuttle is not utilized. He stated that Petitioner's Comparable Sale 2 is adjacent to an office park about one block off of Arapahoe Road. This location does not have a mall but has retail shops. The lease rate for Petitioner's Comparable Sale 3 reflects the land and improvements. He stated that there is not as much value in the buildings as the land. Petitioner's Comparable Sale 4 is in Arapahoe Crossing, a direct mall that is similar to the subject property. Respondent's Comparable Sale 9 was a building half the size of the subject property, had a drive-through window, and was not located at a major intersection. The buyer was an owner-user that has since gone out of business. Mr. Medina explained that he used market value not leased fee in his cost approach.

16. Under cross-examination and questions from the Board Mr. Medina described the interior of the improvement as similar to an Outback Steakhouse or Applebee's restaurant. He stated it would cost a new tenant to cleanout and replace FF&E. Mr. Medina explained that he also used the investment survey method to determine the capitalization rate. Freestanding family style restaurants have a central tendency from 9.75% to 12.0%.

17. Petitioner's witness, Mr. David Baltar, Property Tax Manager for Darden Restaurants, testified that even with the attractive building and the shopping center location, the Red Lobster Restaurant was not profitable. There was a 40% office vacancy rate in the area and a high vacancy rate in the surrounding retail area, which negatively affected their lunch business. He understands clients do come just for dinner but they cannot survive solely from dinner guests.

18. Mr. Baltar testified that the subject property is not visible and that it is not located within walking distance from the main mall, which is three-quarters of a mile away. He stated that the cost to construct the building was more than the property was worth.

19. Petitioner is requesting a 2003 actual value of $1,700,000.00 for the subject property.

20. Respondent's witness, Mr. John Storb, a Certified General Appraisal with the Broomfield County Assessor's Office, testified that the building could easily serve other restaurants based on architectural style. Flatirons Circle, east of Flatirons Mall in Flatirons Marketplace, is a major arterial street for access to the Mall, Interlocken Office Park, Highway 36 and Industrial Lane. The area is divided into three distinct shopping districts with a number of major tenants. Approximately 2 million square feet of retail space exists within one mile of the subject property. The subject property is situated in the Lifestyle District of Flatiron Marketplace, which contains approximately 260,000 square feet of retail space.

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

Market:	$2,695,000.00
Cost:	$2,831,000.00
Income:	$2,445,000.00

22. Based on the market approach, Mr. Storb presented an indicated value of $2,695,000.00 for the subject property. He presented 11 comparable sales ranging in sales price from $1,185,000.00 to $3,046,100.00 or $240.73 to $507.65 per square foot and in size from 4,064 to 6,696 square feet. Mr. Storb testified that nine of the comparables were sale-leasebacks and 10 of the comparables were occupied at the time of sale. Comparable Sale 9 with approximately 4,064 square feet was vacant when it sold for $1,185,000.00 or $291.58 per square foot on April 17, 2001.

23. Two of Respondent's comparable sales were located in Broomfield. Comparable Sale 1 was a Bennigan's, which is immediately south of Flatirons Crossing Mall. It was built in 2001, has 6,000 square feet and sold on April 16, 2002 for $3,045,900.00 or $507.65 per square foot. It is superior in proximity to Flatirons Mall but inferior in car traffic counts. Mr. Storb testified that since Sale 1 is superior to the subject, it would set the upper limit of the value range. Comparable

Sale 7 was a Village Inn that fronts 120th Avenue, a major artery in Broomfield. The location of Sale 7 is inferior to the subject property. It was built in 2000, has 4,525 square feet, and sold on October 1, 2001 for $1,400,000.00 or $309.39 per square foot.

24. Respondent's witness presented a cost approach to derive a market-adjusted cost value for the subject property of $2,831,336.00. It is unknown if the $405,576.00 water and sewer licenses fees were included in the total cost of the project or were an additional cost. The subject site has a leasable area of 48,469 square feet.

25. Mr. Storb presented four comparable land sales that ranged in sales price from $1,300,000.00 to $1,720,000.00 and in size from 35,798 to 85,730 square feet. He placed most weight on Sales 2 and 3 to derive a land market value of $1,360,000.00. Based on the income approach described in detail on page 9 of Respondent's Exhibit 1, Mr. Storb presented a capitalized land value of $1,770,000 or $36.52 per square foot. Mr. Storb concluded to a land value of $1,565,000.00.

26. Mr. Storb testified that the subject property does not have a specific design. The building is not real estate distinct, distinctions occur within the building itself. Therefore, the building could easily serve other restaurants based on architectural style. Mr. Storb used the Marshall and Swift Cost Service to arrive at a cost new for the improvement of $850,760.00. He added the water and sewer license fees of $405,576.00 and the land value of $1,565,000.00 to conclude to a total value of $2,831,336.00 based on the cost approach. Petitioner's reported construction cost was $2,085,442.35, excluding the land.

27. Based on the income approach, Respondent's witness presented a value of $2,445,000.00 for the subject property. Four of Respondent's 11 sales comparables were used for rental comparables. The subject property and the four rental comparables are national chain restaurants. The rental comparables ranged from $29.75 to $43.03 per square foot, with a median of $32.99 per square foot. He reconciled to a $33.00 per square foot market lease rate. Expenses were determined from information submitted by Broomfield Village Associates and Darden Restaurants and were within 3% to 5% of the range used by CoStar Comps for vacancy and expenses. Only the vacancy portion of the 3.4% effective tax rate was attributed to the landlord.

28. Respondent's witness testified that the average capitalization rate reported by CoStar Comps was 8.8%. After talking with Randy Fuss of WSA, he was convinced this rate was overstated. According to the rental information Mr. Storb obtained from Mr. Fuss on the Bennigan's Restaurant sale, the monthly rent was $23,000.00, taxes paid by the seller for 2002 were $32,477.00, and HOA dues paid by the seller were $1,920.00. The tenant paid all other expenses. Based on this information, the capitalization rate for this sale was 7.9%, which lowers the average capitalization rate to 8.6%. Adding the 8.6% capitalization rate to the effective tax rate of 0.2% equals a final capitalization rate of 8.8%. When applied to the net operating income of $215,050.00, the final value indication via the income approach is $2,443,750.00 rounded to $2,445,000.00.

29. Under cross-examination, Mr. Storb admitted that no adjustment grid was included in Respondent's Exhibit 1.

30. Respondent assigned an actual value of $2,367,240.00 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 carefully reviewed the cost, market and income approaches presented by both parties.

3. The Board recognizes a third party interest in the land and concludes that the cost approach would not be a dominant consideration by potential investors. However, the difference between the actual cost to construct the subject improvement and the cost to replace it demonstrates obsolescence. The Board was persuaded that the FF&E caused super adequacy. Although the building could be used by another restaurant, the interior appointments included at construction are germane to the Red Lobster restaurant.

4. The Board disagrees with Petitioner's assertion that the subject's location hindered its performance. Any number of factors could have contributed to the restaurant's performing below expectations. The Board is convinced that the public will drive to the mall to shop as well as to a surrounding destination restaurant for dinner.

5. The Board placed little weight on Respondent's market approach. Respondent's witness presented the mean, median and average of 11 comparable sales used in the market approach, but made no adjustments to the sales. The Board maintains that goodwill and intangibles must be subtracted to arrive at a fee simple interest value. The Board was not provided enough information to determine if Respondent's comparable sales required adjustment for FF&E and/or goodwill.

6. The Board believes that the income approach is the most appropriate method to value the subject property. The income approach accounts for all factors affecting value, including any deficiencies. Obsolescence found in the subject property should be reflected in the rental rate. Mr. Storb chose a median rental rate of $33.00 for the subject property; however, the documentation shown in Respondent's Exhibit 1, pages 29 and 42-73 was conflicting. Petitioner's Rental Comparables 1, 3 and 4 are similar to the subject property in square footage and have NNN leases with five-year options. Mr. Medina chose a rental rate of $23.50 per square foot.

7. The income approach was re-calculated using $28.00 per square foot, the mid-point between Petitioner's and Respondent's rental rates, and the following income and expense data:

Potential gross rent	$198,184	
Less vacancy & collection loss @ 3%	- 5,946	
Effective gross income		$192,238
Operating Expenses:		
Management @ 2%	3,845	
Miscellaneous @ 1%	1,922	
Subtotal	$ 5,767	
Replacement/Reserves @ 1%	1,922	
Total expenses		- $ 7,689
Net operating income		$184,550
Capitalization Rate		9.0%
Stabilized Value		$2,050,556
Rounded to		$2,050,000

8. The Board concluded that the 2003 actual value of the subject property should be reduced to $2,050,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $2,050,000.00.

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 1st day of October 2004.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Rebecca A. Hawkins

This decision was put on the record

OCT 0 1 2004

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

42473.05.doc