

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FIRST BANK OF COLORADA, N.A.,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Richard G. Olona, Esq. Olona & Associates, PC</p> <p>Address: 7472 S. Shaffer Lane Littleton, Colorado 80127</p> <p>Phone Number: (303) 433-1699</p> <p>Attorney Reg. No.: 17940</p>	<p>Docket Number: 42811 42812 42813 42814</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 2, 2004, Steffen A. Brown and Karen E Hart presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Martin E. McKinney, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1380 S. Santa Fe Drive, Denver, Colorado
(Jefferson County Schedule Nos. 183519, 41870, 423168, 424455)**

Petitioner is protesting the 2003 actual value of the subject properties, four separate bank buildings located in Jefferson County, Colorado.

ISSUES:

Petitioner:

Petitioner contends that business fixtures tied to the operation of a business should be placed on the personal property rolls and taxed. Respondent's income approach makes no adjustment for business fixtures, which have been reported on the personal property declarations.

Respondent:

Respondent contends that Petitioner's business fixtures are listed as personal property, not included in the valuation of the real property and are not taxed twice. The items at issue in this case should be valued as real property.

FINDINGS OF FACT:

1. This hearing is a consolidation of Dockets 42811, 42812, 42813, and 42814. Both parties stipulated to the admission of all exhibits. The testimony was given regarding Docket 42811, with both parties agreeing that the valuation methodologies used and the issues of contention were the same for all four Dockets.

2. Petitioner's witness, Mr. Jeffrey M. Monroe of Tax Profile Services, presented the following indicators of value, based on the income approach:

Docket 42811	\$754,815.30
Docket 42812	\$520,839.50
Docket 42813	\$642,197.44
Docket 41814	\$692,772.88

3. Mr. Monroe testified that there is no dispute as to the rentable square footage, rental rate, vacancy expenses or capitalization rate. The primary difference in the income approach is that Petitioner believes there should be a deduction for "return on" and "return of" business fixtures. Respondent has made no consideration to the business fixtures, which are a part of the real estate. According to the Marshall & Swift Cost Service (M & S), Exhibit B1, bank fixtures are 15% to 35% of the structure cost. Mr. Monroe believes his valuation methodology presents an accurate value for the subject properties.

4. Mr. Monroe testified that another method of excluding the bank business fixtures would be to value the entire subject property as commercial property, which would eliminate the concern over the bank fixtures.

5. Under cross-examination, Mr. Monroe testified that the “return on” deduction of \$18,000.00 is 12% of the declared business fixtures, valued at \$150,000.00. The \$150,000.00 is an estimate of costs received from the builder for the business fixtures, as well as available actual cost information. The personal property roll was a full asset listing. The M & S pages were used to support the business fixture calculation, as a test of reasonableness for the “return of” amount presented. His “return of” is the actual installation cost as shown on the personal property declaration, or a linear foot calculation for the teller line. Respondent used a bank rental rate, which would include the fixture income.

6. Petitioner’s witness did not present a cost or market approach to value.

7. Petitioner is requesting a 2003 actual value for the subject properties as follows:

Docket 42811	\$754,815.30
Docket 42812	\$520,839.50
Docket 42813	\$642,197.44
Docket 42814	\$692,772.88

8. Respondent's witness, Mr. Randall K. Brenimer, a Certified General Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

	<u>Market Approach</u>	<u>Income Approach</u>
Docket 42811	\$995,000.00 to \$1,120,000.00	\$841,600.00
Docket 42812	\$725,000.00	\$628,600.00
Docket 42813	\$742,000.00	\$781,700.00
Docket 42814	\$772,000.00	\$776,400.00

9. Regarding the inclusion of business fixtures, Mr. Brenimer testified that he confers with the Assessor’s Personal Property section to avoid double taxation, which he did for the subject properties, including public and confidential documents. He does not believe the fixtures are included in the market value of the subject property.

10. Regarding the income approach, Mr. Brenimer testified that he used the same rental rate as applied to all banks. He used rental rates of \$16.00 - \$17.00 per square foot, occupancy of 90% - 95%, expenses of \$4.00 - \$4.23 per square foot, and a capitalization rate of 12.30%. Special purpose properties such as banks and medical buildings typically rent for higher amounts than other properties. He thinks the premium rental rate is due to locations in primary areas. He admitted that banks do have customized tenant improvements.

11. Mr. Brenimer testified that the fixtures could be included in the cost approach, but he does not believe his value includes trade fixtures; it is a real estate only value.

12. Regarding the market approach, Mr. Brenimer used the same three sales to value all four of the subject properties. He concluded to median values in the sales range. The market approach can include intangible values, which are difficult to extract, such as business value and personal property. His sales did not include personal property, as indicated on the confidential

TD1000 forms.

13. Mr. Brenimer believes that Petitioner's income approach calculation is a corruption of Respondent's income approach. He could not find a foundation for the \$150,000.00 fixture deduction. He does not believe that the personal property declaration schedules that were filed support this deduction.

14. Under cross-examination, Mr. Brenimer testified that the applied bank rental rates are the same for all banks in their respective models. The bank rental rates are generally higher than office rates. The subject properties are classified as average banks. The subject properties are retail banks, offering financial transactions. The only adjustment he made in the market approach was for the canopy over the drive-up teller lines. Regarding the income approach, he used \$16.00 per square foot for office area and \$17.00 per square foot for bank finish. He did not make a deduction for bank fixtures in the income approach; it is not relevant. He did not make a deduction for fixtures in the sales comparison approach, as all of the comparables were banks. He gave most weight to the income approach; there were few bank sales available within the study period. If there is value to the fixtures, it is a value in use; they are fully depreciated.

15. Respondent's witness did not present a cost approach.

16. Respondent's witness concluded to the following 2003 actual values per docket:

Docket 42811	\$880,000.00
Docket 42812	\$650,000.00
Docket 42813	\$750,000.00
Docket 42814	\$775,000.00

17. Respondent assigned an actual value to the subject property for tax year 2003 as follows:

Docket 42811	\$841,600.00
Docket 42812	\$628,600.00
Docket 42813:	\$781,700.00
Docket 42814	\$776,400.00

18. Respondent is recommending a reduction in value for Docket 42813 to \$750,000.00 and for Docket 41814 to \$775,000.00.

CONCLUSIONS:

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

2. Petitioner did not present a market approach and Respondent testified that he gave less weight to the market approach, due to the small number of bank sales available in the valuation period. The Board examined the three sales that were presented. The building sizes vary greatly, one is a multi-tenant property, one is a sale and leaseback, one is a 1031 exchange and one had an interim use. Mr. Brenimer testified that the market approach can include intangible values, which are difficult to extract, such as business value and personal property, though he did not believe any of the sales included personal property, as indicated on the confidential TD1000 forms. Due to the admitted difficulty in extracting business value and other intangibles from the market approach, the small number of available sales with less than ideal sale terms and varied building sizes and uses, the Board decided the market approach should be given little weight.

3. Neither party presented a cost approach to value.

4. The Board relied most on the income approaches presented by both parties. Petitioner's income approach had some minor differences to Respondent's approach, excluding the "return of" and "return on" issues, but Petitioner's witness conceded that he would not dispute the remaining components of the approach.

5. Regarding Docket 42811, Petitioner's witness testified that his \$150,000.00 for bank fixtures is an estimate of costs received from the builder for the business fixtures, as well as available actual installed cost information. The Marshall & Swift pages were used to support his business fixture calculation, as a test of reasonableness for the "return of" amount presented. The Board agrees that a deduction should be taken for business fixtures in the income approach when a bank rental rate is used to value the subject property, which would include income attributable to the fixtures.

6. As a check of reasonableness of Petitioner's requested value, the Board recalculated Respondent's income approach value using the \$16.00 per square foot office rental rate and corresponding expense rates for the entire building, which would not reflect any income due to bank fixtures. The resulting value was \$743,073.00, which is very similar to Petitioner's requested value of \$754,815.30.

7. After careful consideration of all the testimony and evidence presented, the Board determined that the 2003 actual value of the subject properties should be reduced as follows:

Docket #42811	\$754,815.00
Docket #42812	\$520,840.00
Docket #42813	\$642,198.00
Docket #42814	\$692,773.00

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject properties as noted in Conclusion 7 above.

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

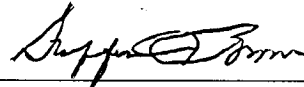
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

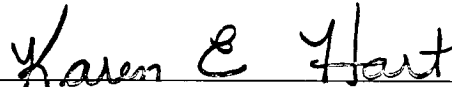
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 15th day of June, 2004.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

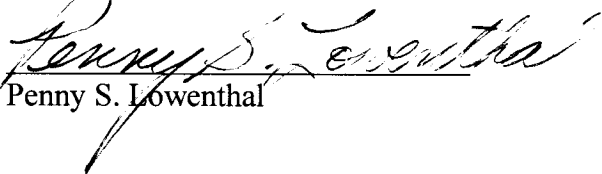


Karen E. Hart

This decision was put on the record

JUN 14 2004

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


Penny S. Lowenthal