BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 ______________________________ Petitioner: **ACF PROPERTY MANAGEMENT,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	
Attorney for the Petitioner: Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0387 Attorney Reg. No.: 6941	**Docket Number: 43030**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 8, 2004, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Charles T. Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

1675 Larimer Street, Denver, Colorado
Denver County Schedule No. 02331-09-038-000

Petitioner is protesting the 2003 actual value of the subject property, an eight-story, Class B office building with first floor retail space built in 1980 on a 19,427 square foot site.

ISSUES:

Petitioner:

Petitioner contends that market conditions at the end of the base period, particularly economic changes following the 9/11 terrorist attacks, were not accurately reflected in the 2003 assigned value. Respondent failed to take into account declining market rental rates and the subject's actual rental rates during the base period.

Respondent:

Respondent contends that both the 1998 sale of the subject and the subject's actual income during the base period support the assigned value.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd J. Stevens of Stevens & Associates Cost Reduction Specialists, Inc., identified the subject as an 8-story multi-tenant office building with first floor retail space. His analysis included a rent roll showing 109,870 square feet of net rentable space, including 9,730 square feet of retail and 100,080 square feet of office space. He testified that the subject has electric baseboard heating and air conditioning, which causes above-average utility expenses.

2. Mr. Stevens presented the following indicators of value:

Market:	$7,690,900.00
Income:	$6,166,659.00

3. Mr. Stevens presented four sales in the market approach, with adjusted sales prices ranging from $50.25 to $98.53 per square foot. These sales occurred between June 1998 and October 2001. All received negative adjustments for time of approximately 0.5 percent per month, with a maximum adjustment of 15 percent. Further adjustments were made for location, age, building quality or appeal and size. An adjustment was made for economic characteristics based on vacancy in each of the comparables at the time of sale as compared to the subject. Mr. Stevens concluded to a market approach value of $70.00 per square foot for the subject.

4. Based on the income approach, Petitioner's witness presented an indicated value of $6,200,000.00 for the subject property.

5. Mr. Stevens testified that the rental rate conclusions included in his income approach were based primarily on leases of the subject property that were executed during the latter part of the base period. The subject's lease rates declined from $19.36 in July 2001 to $12.94 as of April 2002. The subject's average rental rate for office leases executed during 2001 was $14.87 per square foot, declining to an average of $13.12 during the first six months of 2002. He concluded to a gross rental rate of $14.00 per square foot for the subject's office space.

6. Mr. Stevens presented six additional lease comparables. He testified that all were superior to the subject, with effective gross rental rates ranging from $14.17 to $17.79 per square foot.

7. Mr. Stevens reported that limited data was available for analysis of retail rental rates. He testified that he was aware of one comparable retail lease with a base rate of $12.00 per square foot. He concluded to a net rental rate of $16.00 per square foot for the subject's retail space.

8. Petitioner's witness concluded to a 15 percent office vacancy rate and a 10 percent retail vacancy rate in his income approach. His conclusions were based primarily on Ross Research Services Mid-Year 2002 Office Market Report showing the vacancy rate in the Central Business District (CBD) at 15.6 percent. The Ross report showed retail vacancy in the CBD at 9.5 percent as of mid-year 2002.

9. Mr. Stevens deducted actual expenses for the subject and added parking revenue to determine net income. He based his capitalization rate on an analysis of three office building sales and the Integra Realty Resources Survey. He concluded to a capitalization rate of 10.00 percent plus 1.86 percent for property taxes. Petitioner's income approach indicates a value of $6,166,659.00 for the subject. Mr. Stevens testified that he places the greatest reliance on the income approach.

10. Petitioner is requesting a 2003 actual value of $6,200,000.00 for the subject property.

11. Respondent's witness, Carlos Gauna, a Certified General Appraiser with the Denver County Assessor's Office, presented Exhibit 1, an appraisal of the subject property concluding to a value of $9,838,500.00 for tax year 2003. The appraisal indicated the following values:

Cost Approach:	$12,443,400.00
Income Approach:	$ 9,838,500.00
Sales Comparison Approach:	$11,000,000.00

12. Mr. Gauna testified that the subject has 110,242 net rentable square feet, which is slightly higher than the 109,870 square feet reported by Petitioner's witness.

13. The Respondent's witness testified that no weight was given to the cost approach due to the difficulty in accurately reflecting accrued depreciation.

14. In addition to an analysis of the 1998 sale of the subject, Mr. Gauna presented four comparable sales with adjusted prices ranging from $98.30 to $108.97 per square foot. The four properties sold between October1998 and May 2001. Three of the four sales sold prior to the January 1, 2001 through June 30, 2002 base period. Mr. Gauna testified that it was appropriate to use sales within the extended 5-year time period, as well as the sale of the subject due to the limited number of sales that occurred within the base period. Respondent's Sales 1 and 4 represent multi-tenant office buildings, Sale 2 was purchased by a bank for owner use and Sale 3 was converted to office condominiums after the date of sale.

15. Mr. Gauna testified that time adjustments to the comparable sales were not justified

based on data analysis. He further reported that no adjustments were made for differences in vacancy rates between the subject and the comparable sales. He testified that no one in the Denver Assessor's office adjusts for vacancy rates in the sales comparison approach. Adjustments were made to all four sales for parking. Sale 3 was adjusted for age, while Sale 4 was adjusted for both size and amenities. Mr. Gauna concluded to a value of $11,000,000.00 for the subject based on the sales comparison approach.

16. In the income approach, Mr. Gauna relied on his analysis of comparable rental rates and CoStar data. He provided four lease comparables with rents ranging from $18.66 to $20.26 per square foot. Mr. Gauna testified that the comparable information was provided to the Denver Assessor's office on a confidential basis. Mr. Gauna did not provide the addresses of the lease comparables in testimony or within the report. Mr. Gauna testified that the lease comparables represented Class B buildings located in lower downtown and the CBD, with similar dates of completion or rehab. He concluded to a rental rate of $18.00 per square foot for the subject's retail space and $17.00 per square foot for the subject's office space.

17. Mr. Gauna included parking revenue plus an additional $0.50 per square foot for miscellaneous income for services. He included a vacancy loss of 14.75 percent based on a blended rate of 15 percent for the office space and 10 percent for the retail space. Mr. Gauna deducted expenses based on a market ratio of 34.8 percent. He applied the standard capitalization rate used in the Denver Assessor's office of 11.5 percent, including a 1.75 percent tax load. Respondent's indicated value by the income approach was $9,838,500.00.

18. Mr. Gauna presented Respondent's Exhibit 2, a separate income analysis based on the subject's actual 2001 and 2002 income and expenses. He testified that this analysis provided additional support for the subject's assigned value. Exhibit 2 also includes CoStar information for Petitioner's rent comparables. Mr. Gauna testified that the CoStar information indicated higher rental rates for the comparables than those reported by Petitioner's witness. However, he further testified that the rental rates shown by CoStar represented asking, not actual rental rates. Mr. Gauna questioned the high expense ratio of nearly 50 percent used in Petitioner's income approach.

19. Upon cross-examination, Mr. Gauna agreed that the square footage difference reported was not significant. He also confirmed that CoStar showed that the subject's asking rental rate ranged from $17.00 to $18.00 per square foot when the subject sold in 1998 and that this rate had declined to $12.95 per square foot based on leases executed near the end of the base period. Mr. Gauna believes the difference between the two tax loads presented was based on Petitioner's inclusion of special district taxes.

20. Respondent assigned an actual value of $9,838,500.00 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 was convinced that the appropriate rental rate for the subject is $14.00 per square foot, gross, for the office space and $16.00 per square foot, net, for the subject's retail space. This conclusion is based on the Petitioner's analysis of the leases that were executed during the base period. The potential gross income is calculated based on the square footage provided by the Petitioner.

3. The Board was convinced that a vacancy rate of 15 percent for office space and 10 percent for retail space is reasonable based on information provided by the Petitioner. These rates are comparable to Respondent's vacancy rate.

4. Parking income is based on the average income received in 2001 and 2002 as reported on Petitioner's Income Statements. Valet parking revenue was not included in the Board's calculation of income, as this is not considered to be value attributed to the real estate.

5. In reviewing the actual operating expenses for the subject, the Board believes that the Petitioner overstated operating expenses in the income analysis. The Board recalculated the operating expenses based on the information contained in the subject's 2001 Income Statement by deducting $147,341.00 in property taxes from the total expenses of $656,511.00 to conclude to a total of $509,170.00. Operating, maintenance and management fees are included in the total expense amount. An additional 5 percent was deducted for reserves and replacements.

6. The Board determined that a capitalization rate of 11.75 percent (including a tax load of 1.75 percent) was reasonable, based on information provided by both Petitioner and Respondent.

7. The resulting value was calculated as follows:

Potential Gross Income – Office at $14.00/sf	$1,401,120	
Potential Gross Income – Retail at $16.00/sf	$155,680	
Retail CAM Reimbursement at $6.10/sf	$59,535	
Parking Income	$80,000	
Total Potential Gross Income		$1,696,335
Less: Vacancy for Office at 15%	($210,168)	
Less: Vacancy for Retail at 10%	($21,503)	
Effective Gross Income		$1,464,664
Less: Operating Expenses	($509,170)	
Less: Reserves of 5%	($73,233)	
Net Operating Income		$882,261
Capitalized at 11.75%		$7,508,604
Rounded:		$7,500,000

8. The Board concluded that the 2003 actual value of the subject property should be reduced to $7,500,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $7,500,000.00.

The Denver 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 September 2004.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Sondra W. Mercier

Sondra W. Mercier

This decision was put on the record

SEP 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

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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