BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **LAKE ARBOR 96, LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	**Docket No.: 47286**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2008, Debra A. Baumbach, Sondra W. Mercier, and James R. Meurer presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by James Burgess, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2003 and 2004.

PROPERTY DESCRIPTION:

Subject property is described as follows:

9101 Harlan Street Westminster, CO
(Jefferson County Schedule No. 012543)

The property consists of a three story, multi-tenant office building located in the northwest (Westminster) submarket of the Denver metropolitan area. The building contains 45,823 square feet gross and 42,801 square feet net rentable based upon rent rolls from the subject property, and was constructed in 1980. The subject is steel frame and precast panel construction with a flat roof and insulated glass windows. HVAC is forced air and parking consists of 171 surface spaces. There is one elevator serving the three floors. Site size is approximately 2.353 acres with frontage along North Harlan Street and zoning supports the current use. Building occupancy was 94% as of the date of value. Petitioner and Respondent are in agreement relative to the physical characteristics of the building with exception of a small variance (273 square feet) in the net rentable area and concur that the subject was in overall average condition as of the date of value.

Respondent assigned a value of $3,458,800 for tax years 2003 and 2004. Petitioner is requesting values of $2,600,000 for each tax year.

Petitioner presented the following indicators of value:

Cost:	N/A
Market	$3,229,256
Income:	$2,303,145

Based on the Income Approach, Petitioner concluded an indicated value of $2,600,000 for the subject property.

Petitioner presented a Market (Sales Comparison) Approach that included three comparable sales ranging in sales price from $721,000 to $6,525,000 and in size from 13,320 square feet to 74,040 square feet. After adjustments were made, the sales ranged from $61.71 to $86.09 on a per square foot basis. The major adjustments to the comparable sales consisted of location, age, market (economic) characteristics, physical characteristics, and building square footage. Petitioner reconciled the adjusted sales at $72.00 per square foot resulting in an indicated value of $3,229,256.

Petitioner also presented an Income Approach to derive a value of $2,303,145 for the subject property. A direct capitalization model was used and consisted of income estimated at $14.00 per square foot gross applied to the rentable area. A vacancy and collection factor was estimated at 10% and expenses (management fee and office expense) were estimated at $208,869 or $4.88 per rentable square foot exclusive of reserves and real estate taxes. Petitioner deducted 10% for operating, maintenance, and reserves. The net operating income was capitalized at a 12.12% rate which included and 10.00% base rate plus a 2.12% load for taxes. Petitioner admitted that the tax load was erroneous and should have been 2.80%

According to Petitioner, the estimates of income were based on a survey of recent leases signed in the northwest office market, as well as four leases signed within the study period in the subject building. The vacancy rate was derived from information provided by CoStar and Ross Research. The source of the expenses was not disclosed, and the overall rate was based on sales within the market and third-party reports.

Respondent presented the following indicators of value:

Cost:	N/A
Market	$3,530,000
Income:	$3,400,000

Based on the Income Approach with secondary consideration to the Market Approach, Respondent concluded an indicated value of $3,450,000 for the subject property.

Respondent presented a Market Approach that included four comparable sales ranging in sales price from $1,350,000 to $4,500,000 and in size from 17,625 to 53,425 rentable square feet. The major adjustments to the comparables sales were for leasing, age, location, design, building square footage, quality/condition, buyer motivation, and excess land on Comparable 2. Respondent reconciled the adjusted sales at $81.95 per square foot resulting in an indicated value of $3,530,000.

Respondent presented an Income Approach to derive a value of $3,401,610 for the subject property. A direct capitalization model was used to arrive at this value and consisted of income estimated at $14.75 per square foot gross applied to the rentable area. A vacancy and collection factor was estimated at 6% and expenses were estimated at $204,602 or $4.75 per rentable square foot exclusive of real estate taxes. The net operating income was capitalized at a 12.05% rate which included and 9.25% base rate plus a 2.80% load for taxes.

According to Respondent, the estimates of income were based on a rent survey of leases in the Jefferson County office market as well as actual leasing in the subject building. The vacancy rate was derived from information provided by actual occupancy of the building during the study period. The source of the expenses was information provided by the owner of the building and third party sources. The overall rate was based on sales within the market and third-party reports.

The significant differences between Petitioner's and Respondent's estimates of value were the comparables used in the Market Approach and the adjustments to those comparables, and the estimate of the appropriate market rent per square foot and vacancy rate for the subject in the Income Approach.

During testimony, Petitioner argued that Respondent's adjustments to the comparables sales in the Market Approach were not reasonable and supportable. Petitioner further argued that the estimated rents for the building in the Income Approach did not accurately reflect market conditions during the base period. Specifically, Respondent's estimated rents reflected contractual rates not market rates.

Respondent argued that Petitioner's adjustments to the comparables sales in the Market Approach were not reasonable and supportable. Petitioner further argued that their estimate of rents and expenses were based primarily on lease and expense summaries provided by the owner of the building and should be indicative of market rents for the subject during the study period.

Given the physical and economic characteristics of the property, the Board concludes that the Income Approach provides the most reliable indication of market value for the subject. After further review of the income, expense, and rate estimates used in Petitioner's and Respondent's direct capitalization models, the Board determines that the variables used in Petitioner's model are more reflective of the market conditions during the study period. Reference is also made to Respondent's office rental survey (Ex. 1 at 52) which further supports Petitioner's assumptions. However, the Board agrees that a line-item deduction for reserves and replacements is not appropriate.

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

The Board concludes to an actual value for the subject property for tax year years 2003 and 2004 of $2,600,000.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2003 and 2004 actual value for the subject property of $2,600,000.00.

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

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Colorado Revised Statutes ("CRS") section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Colo. Rev. Stat. § 39-10-114.5(2) (2007).

DATED and MAILED this 21st day of March 2008.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Sondra W. Mercier

James R. Meurer

This decision was put on the record

MAR 2 1 2008

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

Heather Heinlein

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

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