BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **JERALD M. BARNETT,** v. Respondent: **EL PASO COUNTY BOARD OF EQUALIZATION.**	**Docket Nos.: 48640 and 50518**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on February 9, 2009, Karen E. Hart and Lyle D. Hansen presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Andrew C. Gorgey, Esq. Petitioner is protesting the 2007 and 2008 actual value of the subject property.

The Board consolidated Docket Numbers 48640 and 50518.

PROPERTY DESCRIPTION:

Subject property is described as follows:

6050 Erin Park Drive, Colorado Springs, CO
El Paso County Schedule No. 63162-15-012

The subject is a two-level masonry office building constructed in 1981. The building contains a total of 20,075 square feet of gross building area and a net rentable area of 19,301 square feet. The building is situated on a 66,647-square-foot site. The building has single-tenant occupancy utilized as classroom and office space.

Petitioner presented the following indicators of value:

Market:	$1,063,975.00
Cost:	n/a
Income:	$811,442.00

Based on the market approach and the income approach, Petitioner presented an indicated value of $825,000.00 for the subject property.

Petitioner presented four comparable sales ranging in sales price from $550,000.00 to $2,008,600.00 and in size from 8,480 to 29,308 square feet. After adjustments were made, the sales ranged from $48.66 to $58.42 per square foot. Petitioner concluded to a value of $1,063,975.00 by the market approach.

Petitioner presented no cost approach.

Petitioner presented an income approach to derive a value of $811,442.00 for the subject property.

Petitioner concluded a rental rate of $11.50 per square foot on a full service basis; a vacancy rate of 12%; management fee of 5%; office expense of $4.50; operating, maintenance and reserves of 10%; and an overall capitalization rate of 10.27%. Petitioner concluded annual net revenue of $230,863.00; vacancy allowance of $27,704.00; management fee of $10,158.00; office expense at $90,338.00; operating, maintenance and reserves at $19,300.00; and a net operating income of $83,363.00.

Petitioner is requesting a 2007 and 2008 actual value of $825,000.00 for the subject property.

Respondent presented the following indicators of value:

Market:	$2,126,143.00
Cost:	$1,930,050.00
Income:	$1,965,817.00

Based on the three approaches to value, Respondent presented an indicated value of $2,126,143.00 for the subject property.

In developing the market approach, Respondent presented five comparable sales ranging in sales price from $1,319,953.00 to $3,875,000.00 or $98.37 to $221.15 per square foot and in size from 13,183 to 30,378 square feet. After adjustments were made, the sales ranged from $90.21 to $144.85 per square foot. Respondent concluded a value by the market approach of $2,126,143.00.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $1,930,050.00. Respondent presented three comparable land sales ranging in sales price per square foot from $6.49 to $8.99 and in size from 12,721 to 98,445 square feet. After adjustments were made, the sales ranged from $6.29 to $6.74 per square foot. Respondent concluded a land value of $6.30 per square foot for a total land value of $419,870.00. Respondent concluded a reproduction cost estimate of $1,974,091.00 and total accrued depreciation of $463,911.00 resulting in a reproduction cost new less depreciation of $1,510,180.00. Respondent concluded a value by the cost approach of $1,930,050.00.

Respondent used the income approach to derive a value of $1,965,617.00 for the subject property. Respondent concluded a rental rate of $12.14 per square foot on a full service basis; common area at 4.0%; vacancy rate of 8.10%; operating expenses of 20%; and an overall capitalization rate of 8.75%. Respondent concluded a potential gross income of $233,962.00; an effective gross income of $215,011.00; and a net operating income of $172,009.00. Respondent concluded a value by the income approach of $1,965,617.00.

Respondent assigned an actual value of $1,912,653.00 to the subject property for tax years 2007 and 2008.

Respondent concluded that the cost approach to value was unreliable because of the age of the improvements and the 23% accrued depreciation amount. Respondent concluded the income approach to value to be less reliable because of the lack of large office space available in the surrounding area. Respondent was unable to locate a lease rate for classroom space in Colorado Springs.

Respondent considered the market approach to be the most accurate because of the purchase of the neighboring property in the base year further concluding that this property would have incurred similar market conditions as the subject.

Petitioner identifies the subject as an office building. Respondent identifies the subject as an office building/classroom. Respondent's appraiser testified that she observed no stadium seating within the building that would be considered to be improvements typical of classroom use. Respondent's appraiser testified that the subject is currently occupied by Remington College, and further testified that the building could be utilized as a multi-tenant facility. Respondent's appraiser stated in the appraisal report that she was unable to locate a lease for classroom space in Colorado Springs and therefore utilized comparable office rentals in the area. Respondent utilized five comparable sales.

The Board concludes that since the subject was constructed as an office building and had been utilized in the past as an office building, the subject should be valued as an office building and not as a classroom building.

Petitioner testified that substantial deferred maintenance existed in the building improvements. Petitioner presented no documentation to support a conclusion of deferred maintenance. Photos presented in Petitioner's appraisal report indicated deferred maintenance to landscaping and parking areas, however the interior photographs indicate no deferred maintenance. Respondent indicated that no significant deferred maintenance was observed at inspection. The Board concludes that no major loss in value could be attributable to deferred maintenance.

Petitioner presented sufficient probative evidence and testimony to prove that the tax years 2007 and 2008 valuation of the subject property was incorrect.

The Board concludes that an appropriate office rental rate for the subject would be $12.50 per square foot. The Board relied upon Petitioner's Comparable Sales 3 and 4 for this office rental rate. Comparable Sale 3 is located in the same general area in Colorado Springs. This office building is a low-rise multi-tenant structure built in 1986 making it comparable to the subject property in building design and age. The rental rate per square foot per year was indicated at $12.00. The Board considered the building quality of the subject to be superior to this building. Petitioner's Comparable Sale 4 is a low-rise office building constructed in 1975. This office building has superior location in the central business district, and building quality concluded to be comparable to the subject. The office rental rate was $14.50 per square foot. Based upon these two office building rentals, the Board concluded the subject office rental rate at $12.50 per square foot. This rental rate is further supported by four of Petitioner's lease comparables ranging in gross lease rates from $11.00 to $13.00 per square foot.

The Board concludes a vacancy rate of 9% for the subject. The Board relied upon Petitioner's four comparable sales and Respondent's Comparable Sale 1 for the vacancy rate conclusion. Petitioner's Comparable Sales 1, 2, and 3 and Respondent's Comparable Sale 1 were indicated as multi-tenant office buildings leased at 100%. Petitioner's Comparable Sale 4 was indicated to be occupied by a single tenant, occupying 90.3% of the building.

The Board agrees with Petitioner's conclusion of 5% for a management fee.

The Board concludes office expense and reserves at $4.00 per square foot. Respondent's Comparable Sale 1 which is located next door to the subject property and comparable in building age, design and quality, reported annual operating expenses of $3.50 per square foot. Petitioner's lease comparables indicate $5.00 per square foot gross expenses; Petitioner concluded operating expenses at $4.50 per square foot.

Since the Board concludes that no excessive deferred maintenance existed, no deductions are included.

The Board concludes an overall capitalization rate of 8.25%. The Board relied upon the Smith/Burbach Real Estate Investment Survey for the summer of 2006. The Board identified twelve investor respondents in the Colorado Springs and Denver area where the overall capitalization rate range for Suburban/Low Rise Office Buildings was 6.5% to 10.0% with an average of 8.39%.

The Board concludes gross rental income at $250,938.00; a vacancy of $22,584.00; management fee of $11,418.00; operating expenses of $80,300.00; resulting in a net operating income of $136,636.00. The overall capitalization rate of 8.25% was applied to derive a value indication of $1,656,194.00.

As additional support for the Board's value conclusion by the income approach, the Board utilized Petitioner's Comparable Sale 3 in the market approach. This comparable sale is located in the same general area in Colorado Springs. This office building is a low-rise multi-tenant structure built in 1986 making it comparable to the subject property in building design and age. The Board accomplished only a downward adjustment for size and concluded a value indication by the market approach of $1,485,460.00.

The Board places greater weight upon the income approach and concludes the 2007 and 2008 actual value of the subject property at $1,650,000.00.

ORDER:

Respondent is ordered to reduce the 2007 and 2008 actual value of the subject property to $1,650,000.00.

The El Paso 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 CRS § 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 of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 19th day of March 2009.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Lyle D. Hansen

This decision was put on the record

MAR 19 2009

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

Heather Flannery

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

48640 & 50518