BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **COLORADO MILLS MALL LIMITED PARTNERSHIP,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 49107**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on March 5-6, 2009, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Writer Mott, Esq. Petitioner is protesting the 2007 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

14500 West Colfax Avenue, Lakewood, Colorado
(**Jefferson County Schedule No. 440255)**

The property is a single-story, 1,185,664-square-foot outlet mall. This square footage includes interior common area, theater, and indoor skating park. The site is 68.73 acres in size.

Petitioner presented the following indicators of value:

Cost:	$123,960,000.00
Market:	$123,840,000.00
Income:	$124,815,000.00 to $128,800,000.00

Petitioner presented a cost approach to derive a market-adjusted cost value for the subject property of $123,960,000.00.

Petitioner's witness, Mr. Steve Letman, presented six comparable land sales, including two sales that occurred outside the five-year extended base period. Base period sales ranged from $2.35 to $5.42 per square foot and 31.73 acres to 57.06 acres in size. Petitioner concluded to a land value of $5.00 per square foot for the subject. Petitioner relied on Marshall Valuation Service Cost Manual information to estimate replacement costs. Adjustments were made to reflect the appropriate base period. Indirect costs of 5% and profit at 15% were added. Petitioner provided data from five local malls indicating an economic life of 20 to 30 years. An effective age of 7 years and an economic life of 25 years were used to depreciate the primary mall and concourse areas by 28%. The paving, theater, and skating park were depreciated 25% based on an effective age of 5 years and a 20-year economic life. Petitioner's witness testified that he placed the greatest reliance on the cost approach as it would not reflect business enterprise value (BEV).

Based on the market approach, Petitioner presented an indicated value of $123,840,000.00 for the subject property.

Petitioner presented six comparable sales ranging in sales price from $85.46 to $160.90 per square foot. Based primarily on Sales 1 and 6, Petitioner concluded to a value of $135.00 per square foot. Due to a lack of data, little reliance was given to this approach.

Petitioner presented an income approach to derive a value range of $124,815,000.00 to $128,800,000.00 for the subject property. Petitioner initially analyzed the subject's value using the income approach by relying on the actual income and expenses for 2005 and 2006. Petitioner applied a capitalization rate of 8% plus tax load of 3.85% to conclude to a value of $128,800,000.00 using actual income and expenses.

Petitioner presented a second income approach using market rent less a 30% deduction for BEV. Vacancy of 10% and reserves/commission of $0.70 per square foot were deducted. Rent for temporary tenants was calculated separately and capitalized at a rate of 8.5% compared to an 8.0% rate (11.85% loaded for taxes) used for the permanent and major tenant income. Petitioner added the concluded costs of the theater, skating park, and associated land to conclude to a value of $124,815,000.00 using this method in the income approach.

Petitioner is requesting a 2007 actual value of $124,000,000.00 for the subject property.

Respondent presented the following indicators of value:

Cost:	$136,750,000.00
Market:	$128,000,000.00 to $160,000,000.00
Income:	$154,800,000.00

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $136,761,602.00.

Respondent presented no comparable land sales data to the Board and concluded to a value of $7.00 per square foot based on file data. Respondent relied on a computer generated cost analysis using Marshall Valuation Service. Depreciation of 3% was applied to the mall area, with 5% depreciation deducted for the theater and skating park. An additional 10% deduction was made to the skating park to reflect functional obsolescence.

Based on the market approach, Respondent presented an indicated range in value of $128,000,000.00 to $160,000,000.00 for the subject property.

Respondent presented eight comparable sales ranging in sales price from $85.46 to $211.28 per square foot. Five of the comparable sales were located outside Colorado. The remaining three sales involved the single purchase of the outlet locations in Castle Rock, Loveland, and Silverthorne.

Respondent used the income approach to derive a value of $154,800,000.00 for the subject property. Respondent applied gross rents based primarily on the actual rental rates generated by the subject for the mall, skating park, and theater. Vacancy of 8% and expenses of $10.00 per square foot were deducted. A capitalization rate of 7.75% with a tax load of 3.85% resulted in an overall rate of 11.60% which was applied to the subject. A second analysis was included, but not relied upon. The second analysis valued the mall area based on actual income and expenses, then added the cost of the theater, skating park, and supporting land to provide an indication of value of $161,722,000.00.

Respondent assigned an actual value of $149,400,000.00 to the subject property for tax year 2007.

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

The Board concluded that the income approach provides the best indication of the value of the subject property because it is an income producing property. Both parties reported that numerous types of lease agreements existed with the subject, including leases with percentage rent only, net leases, gross leases, and modified gross leases, as well as combinations of these types of agreements. Neither party presented adequate comparable rental data to determine the market rent for the subject. Given the numerous types of lease agreements and the lack of comparable data, the most reliable information is the actual income and expense information reported for the subject.

That being said, the Board has analyzed the permanent, in-line leases that appear to have been signed during the base period to determine if the actual rent for the subject is reflective of market conditions during the base period. For the fifteen leases that appear to have started during the base period, the weighted average minimum rental rate is $21.40 per square foot with a mean of $27.00 and a median of $22.00 per square foot. Five leases appear to include no reimbursement for expenses. These five indicate a weighted average rental rate of $17.41 per square foot. For 2005, the actual income from permanent in-line tenants was calculated as $27.72 per square foot prior to reimbursements, or slightly above the mean reported for leases that transacted within the base period. Therefore, the Board has concluded that the actual income to the subject is reflective of market conditions during the base period.

While the Board believed that it was possible for BEV to exist for this property type, Petitioner failed to convince the Board that the differential in rent between the subject and limited market data consisted of BEV. The Board was convinced that both parties were correct in not including income from sponsorships, and that this type of income might constitute a form of BEV.

The Board was convinced that the subject property, a one-story enclosed mall, has above average costs for security and common area maintenance. This is a form of functional obsolescence that must be considered in the valuation of the subject. The Board recognizes that the subject property has high vacancy compared to market indicators and that temporary tenants are a way to fill the space and boost mall activity. However, temporary tenants present above average risk that needs to be considered in the analysis of vacancy and capitalization rate. Using the rent roll dated December 1, 2005, the Board identified 21 tenants with lease terms of 12 months or less. The average lease term for those 21 tenants was just over 6 months and included the December holiday period. That is equal to an annual vacancy of nearly 50% for space occupied by temporary tenants.

While Respondent testified that they realized that the subject was not operating at a stabilized level during the base period, the rental rate, vacancy rate, and capitalization rate used by Respondent did not adequately reflect the functional issues affecting the subject.

Petitioner concluded to an overall rate of 8.0% based on market surveys which indicated an average of 8.10%. Respondent concluded to a capitalization rate of 7.75% based on five different methods of determining cap rates including an analysis of cost of capital, alternative equity investments, debt service coverage, yield rate analysis, and market surveys. Both parties applied an effective tax rate of 3.85% to the concluded overall rate. Applying both rates to the concluded net operating income for 2005 of $14,809,989.00 produces a value range of $125,000,000.00 to $128,000,000.00, rounded. Petitioner concluded to a value of $128,800,000.00 based on weighted income information for 2005 and 2006. The Board found that Petitioner’s concluded value under this approach was reasonable.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property to $128,800,000.00.

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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 16th day of July 2009.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Sondra W. Mercier

Sondra W. Mercier

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

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