

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>NNN INVESTMENTS BUSINESS PARK LLC ETAL,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket Nos.: 50131 &amp; 50789</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 20, 2009 MaryKay Kelley and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Robert D. Clark, Esq. This is a consolidated hearing in which Petitioner is protesting the 2007 and 2008 actual value of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**327 Inverness Drive South, Englewood, Colorado  
(Douglas County Schedule No. R0444058, Parcel No. 2231-021-01-003)**

The subject is a single tenant office building that was completed in 1997 and renovated in 2004. As of the date of value, the building was subject to a long-term lease agreement with Aurora Loan Services, with Lehman Brothers Holdings, Inc. as guarantor. The lease term was from November 1, 2004 through July 31, 2016. The lease agreement identifies the building as 109,240 square feet of rentable office space with an additional 2,653 square feet of rentable storage space. The lot size is 7.86 acres. The building was classified by both parties as class B in design and construction quality.

Neither party provided a cost approach in their analysis of the subject. Petitioner presented the following indicators of value:

Market:	\$9,175,226.00
Income:	\$8,021,068.00

Based on the market approach, Petitioner presented an indicated value of \$9,175,226.00 for the subject property.

Petitioner presented three comparable sales ranging in sales price from \$45.00 to \$145.38 per square foot. Petitioner included the June 2005 sale of the subject, at a purchase price of \$115.74 per net rentable square foot, shown as Comparable Sale 2. Petitioner adjusted the comparable sales for differences in location, age, economic characteristics, physical characteristics, excess land and size. Petitioner made a 25% downward adjustment to the sale of the subject for economic characteristics to provide an adjusted value of the subject of \$86.80 per square foot. After adjustments were made, the sales ranged from \$58.05 to \$86.80 per square foot. Petitioner concluded to a value of \$82.00 per square foot for the subject.

Petitioner presented an income approach to derive a value of \$8,021,068.00 for the subject property.

Petitioner applied a lease rate of \$7.25 per square foot net of expenses to the office portion of the subject based on the effective lease rate in place during the base period. Petitioner applied a lease rate of \$1.03 per square foot net of expenses based on the lease rate in place as of the end of the base period (June 30, 2006) for the storage portion of the subject. Deductions of 5% were made for vacancy allowance, management fees and owner's costs for operating, maintenance and reserve expenses. A capitalization rate of 8% plus an additional 3.14% for taxes was applied.

Petitioner is requesting an actual value of \$8,100,000.00 for the subject property for tax years 2007 and 2008.

Respondent presented the following indicators of value:

Market:	\$12,478,000.00
Income:	\$12,890,000.00 to \$13,900,000.00

Based on the market approach, Respondent presented an indicated value of \$12,478,000.00 for the subject property.

Respondent presented three comparable sales ranging in sales price from \$123.00 to \$154.00 per square foot. Respondent's witness testified that he had considered the need for a time adjustment; however, data analysis did not indicate that an adjustment was required. All three sales received downward adjustments for superior design and construction quality compared to the subject. Additional adjustments were made for underground parking, location and building size

compared to the subject. After adjustments were made, the sales ranged from \$105.00 to \$122.00 per square foot. Respondent concluded to a value of \$105.00 per gross square foot for the subject.

Respondent used the income approach to derive a range in value of \$12,890,000.00 to \$13,900,000.00 for the subject property.

Respondent initially valued the subject on a leased fee basis using the lease rate of \$7.97 per square foot for the office portion of the subject and \$1.03 per square foot for the storage portion. Both rates were current as of the end of the base period. A slight deduction for owner's expenses was made and a capitalization rate of 6.25% was applied, resulting in a value of \$13,900,000.00 for the subject.

A second fee simple value was derived for the subject based on a market rental rate of \$17.00 per square foot full service for the office portion of the building and the actual rate of \$1.03 per square foot net of expenses for the storage portion. A vacancy and credit loss of 5% was deducted along with expenses of 25%. A capitalization rate of 7% with an additional 3.08% effective tax rate resulted in an overall rate of 10.08% applied to indicate a value of \$12,890,000.00 for the subject.

Respondent assigned an actual value of \$12,770,033.00.00 to the subject property for tax years 2007 and 2008.

Petitioner contends that because the tenant began to reduce occupancy of the building in 2006 and subsequently filed for bankruptcy in late-2008 the value of the building should be reduced between the June 2005 sale and the date of value. However, Petitioner provided no supporting data to indicate that either an economic or physical change had occurred in the subject during the base period. Consequently, Petitioner's 25% adjustment to the sale of the subject within the market approach was unsupported.

Respondent contends that the lease in place as of the date of sale was relevant and guaranteed as of the date of value, with no economic or physical change in the building occurring during the base period.

The Board places the greatest reliance on the actual sale of the subject, which occurred June 2005, within the base period, for \$12,950,000.00. Neither party presented evidence or testimony to support a change in value between the date of sale and the date of value due to economic or physical changes in the building. There was no evidence or testimony to indicate that the base period sale of the subject was not arm's-length or did not meet the definition of market value.

The subject is a net leased property that was purchased by an investor. The income approach provides secondary supportive evidence that the price paid for the subject was supported by the income to the subject at the time of sale. Respondent correctly applied Volume 3 of the *Assessor's Reference Library* (7.13), Long-Term Non-Market Lease Valuation, to value the subject. This analysis indicates that there is no leasehold value associated with the subject. While the Board would recalculate Respondent's income approach to include a higher deduction for owner's expense that more accurately reflected the actual expenses reported, that change would not result in an overall change in value.

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

**ORDER:**

The petition is denied.

**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 17<sup>th</sup> day of September 2009.

**BOARD OF ASSESSMENT APPEALS**

Sondra W. Mercier  
Sondra W. Mercier

MaryKay Kelley  
MaryKay Kelley

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

Heather Flannery  
Heather Flannery

