BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **BUCKINGHAM WEST – FEDERAL PLAZA LLC,** v. Respondent: **ADAMS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 50770**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on September 2, 2009, Sondra W. Mercier, MaryKay Kelley, and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Jennifer M. Wascak, Esq. Petitioner is protesting the 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

10250-10350 Federal Boulevard, Federal Heights, Colorado
Adams County Schedule Nos. R012100, R0121108 & R0121104
(Parcel Nos. 01719-17-1-13-007, 01719-17-1-13-008 & 01719-17-1-13-011)

The subject property is part of the Federal Plaza Retail Center anchored by a Safeway grocery store. The subject consists of two one-story multi-tenant strip retail buildings and a free-standing restaurant located on a pad side. The Safeway building is not included as part of the subject property. The subject property's strip retail space includes 16 tenant spaces with a rentable area of 33,027 square feet. The restaurant building has two tenant spaces with a total of 4,150 square feet. The combined rentable area of the subject property is 37,177 square feet. The buildings were constructed in 2000, according to Adams County Assessor's records (2002 according to Petitioner). The improvements are situated on a 5.40-acre site. The construction is concrete slab on grade, steel frame with concrete block exterior walls with stone trim, metal casement windows and doors, and flat roofs. The buildings have forced air systems providing heat and air conditioning. The site is landscaped and has lighted asphalt paved parking. As of June 1, 2006, the property had 13 tenants occupying a total of 27,505 square feet, with 5,522 square feet vacant. The pad site building was fully occupied by Chipotle and Spicy Pickle restaurants. The overall vacancy for the property was 14.8%. Retail tenants include Blockbuster Video, MoneyTree, Papa John's Pizza, and a variety of other restaurant and service businesses.

Respondent assigned a value of $7,424,034.00 for tax year 2008. Petitioner is requesting a value of $5,000,000.00.

Petitioner presented the following indicators of value:

Cost:	Not used
Market:	$5,948,320.00
Income:	$4,897,578.00

Petitioner's witness, Mr. Todd J. Stevens, did not present the cost approach to value.

Petitioner's witness presented two comparable sales with prices of $5,075,000.00 and $5,200,000.00 and sizes of 23,374 square feet and 53,589 square feet. On a per square foot basis, the sale prices were $94.70 and $222.47. According to Petitioner's witness, there were few sales available during the base period, so it was necessary to use sales located farther from the subject than would be ideal. Adjustments were made to the sales for location, age of the improvements, economic characteristics (described as current economic conditions and vacancy), and physical characteristics. After adjustments, the indicated sale prices were $122.17 and $186.87 per square foot. The value conclusion using the market approach was $160.00 per square foot or $5,948,320.00.

Petitioner's witness presented an income approach for the subject property with an indication of value of $4,897,578.00. Direct capitalization methodology was used. Petitioner's witness presented data for six rent comparable leases as support for the market rent estimate for the in-line space; five had lease dates within the base period, with one additional lease, which occurred in June 2004, within the extended base period. The leases within the base period indicated a range in rental rates of $15.00 to $19.00 per square foot on a triple net lease basis. The existing leases for in-line space at the subject were all signed prior to the base period. Petitioner's witness cited an asking rent for in-line space at the subject of $18.00 per square foot at the end of the base period. Petitioner's witness concluded to a triple net rental rate of $17.00 for the 33,027 rentable square feet of in-line space. Two pad building leases were presented including one executed at the subject in September 2004, which is within the extended base period. The second pad space lease indicated a triple net rent of $24.00 per square foot. Petitioner's witness concluded to a triple net rental rate of $23.00 for the 4,150 rentable square feet in the pad site building. Additional revenue of $11.00 per square foot was estimated for common area maintenance (CAM).

Petitioner's witness testified that third party market reports show vacancy rates for similar retail space in the market of 7.4% and 6.45%. According to Petitioner's witness, the vacancy in the subject property was 14.85% at the end of the base period. A 15% vacancy and collection loss factor was used. Operating expenses included a 5% management fee, $219,648.00 for common area maintenance excluding property tax, and 15% for operating, maintenance and reserves. The derivation of the expense estimates used was not provided. Petitioner's witness presented extrapolated capitalization rates for 16 sales ranging from 5.46% to 8.00%. The witness also cited a third party market report that indicated overall rates of 6.50% to 10.50%. The net operating income was capitalized at a rate of 10.44%, which included a base rate of 7.50% plus 2.94% for the effective property tax rate.

Petitioner's witness testified that the Respondent's appraisal includes a comparable sale (Sale 1) that occurred outside the base period and should be excluded. In addition, the witness stated that Respondent's Sales 1 and 2 are not arm's-length transactions. Petitioner's witness testified that Respondent's use of the same rental rate for both the in-line and pad building space is incorrect. Respondent's income analysis understates the property's expenses by excluding taxes and other CAM expenses. Even though Respondent has excluded taxes, the overall capitalization rate does not include the effective property tax rate factor. Respondent provides third party market report information regarding capitalization rates, but has selectively excluded some of the higher rates shown in the actual market report to conclude to the lowest capitalization rate. In the opinion of Petitioner's witness, this all results in overvaluation of the property.

Based primarily on the income approach with secondary emphasis on the market approach, Petitioner presented an indicated value of $5,000,000.00 for the subject property.

The Board generally agrees with the direct capitalization methodology used by Petitioner's witness with the following exceptions: 1) After considering the vacancy rates indicated for similar properties in the market by the third party market reports and the estimate of market rents for the subject property, the use of a 15% vacancy rate appears high. 2) Based on the operating expense history for the subject property, the CAM expense excluding the property tax appears reasonable, but the additional expense deductions shown by the witness for management fee and operations/maintenance/reserves duplicate expenses already deducted within the CAM category. These items result in an undervaluation of the property by Petitioner's witness.

Respondent presented the following indicators of value:

Cost:	$7,567,000.00
Market:	$7,621,000.00
Income:	$7,568,000.00

Respondent's witness, Mr. Edward Hermann, an appraiser with the Adams County Assessor's office, used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $7,567,000.00.

Respondent's witness presented three comparable sales. Sale 1 occurred in October 2006, outside the base period. Respondent's witness stated the property was marketed during the base period, so it is valid to include in this analysis. Because it could not be determined that the property was under contract within the base period, the Board determines that Sale 1 cannot be considered. The Board concluded that Petitioner's witness provided inadequate confirmation support to prove that Respondent's Sale 2 is not an arm's-length transaction, so it was allowed.

Sales 2 and 3 occurred within the base period and had prices of $7,500,000.00 and $7,700,000.00, or $170.35 and $311.40 per square foot. These two sales were 24,085 square feet and 45,200 square feet in size. Respondent's witness considered qualitative rather than quantitative adjustments for each sale. Therefore, the witness did not conclude to adjusted sale prices for the comparables. Respondent's witness concluded that one of the comparable sales is inferior to the subject and the second is superior. Using this approach, Respondent's witness concluded to a market value of $205.00 per rentable square foot, between the value indications for the comparable sales.

An income approach was presented by Respondent's witness with an indication of value of $7,568,000.00 for the subject property. Direct capitalization methodology was used. Respondent's witness presented data for ten rent comparables as support for the market rent estimate for the subject. The witness testified that the rent comparable information is composite data for the ten properties shown and does not represent individual actual leases. In response to Petitioner's questions, Respondent's witness stated that the composite rent comparable data could possibly include leases that occurred outside the base period. Respondent's witness did not distinguish between the in-line space at the subject property and the pad site building space. The composite leases indicated a range in rental rates of $13.00 to $27.70 per square foot on a triple net lease basis. The wide range in rents is generally due to differences in the age of the properties, location, and whether or not they are anchored centers with national name tenants. Respondent's witness concluded to a triple net rental rate of $22.50 for all 37,177 rentable square feet. The witness did not estimate additional reimbursement revenue for CAM, stating that his choice of a conservatively high vacancy and collection loss rate offset the potential revenue from this source.

Respondent's witness cited a third party market report that quoted vacancy rates for similar retail space in the market of 8.0% to 14.0%. According to Respondent's witness, the vacancy in the subject property was 25.0% at the end of 2006 (not as of June 30, 2006). A 24% vacancy rate was used including both vacancy and expense collection loss. The witness concluded to an estimate of 12.5% of the effective gross income for CAM. This estimate includes management and reserves in addition to other typical common area expenses. However the estimate excludes the property tax, which the witness determined should be excluded because it is the responsibility of the tenant under the lease.

Respondent's witness presented capitalization rate information for five sales ranging from 7.0% to 8.9%. The witness also cited two third party market reports that indicated overall rates generally from 6.0% to 8.0%. In response to Petitioner's questions, Respondent's witness testified that the complete range of capitalization rates shown by one of the third party market reports was not included in his appraisal. However, the excluded rates would not have affected his conclusion of an appropriate rate for the subject property. The net operating income was capitalized at a rate of 7.35%, which does not include a factor for the effective property tax rate. Respondent's witness determined that it is not appropriate to factor in the property tax rate because under the leases, the tax is to be paid by the tenants.

The Board does not concur with the methodology used by Respondent's witness in several respects: 1) The use of a single rental rate for both the in-line space and the pad building space, given the superior visibility of the pad building. 2) Respondent's methodology excluding both the property tax expense and the effective property tax rate from the capitalization rate used. Because the owner pays the property taxes to the taxing authority, not the tenants, it is appropriate methodology to reflect that expense and potential tenant reimbursement revenue in some form within the operating pro forma. 3) Inadequate information was presented to persuade the Board that the 24% vacancy rate used by Respondent adequately addresses the exclusion of the CAM reimbursement revenue from the tenants. 4) Respondent's witness provided no support for the 12.5% CAM expense estimate used and it appears to be low relative to the actual CAM expense history for the subject property. 5) Because Respondent's witness has excluded the property tax expense from his analysis, the overall capitalization rate used should include the effective property tax rate, but it does not. These items result in overvaluation of the subject property.

Respondent's witness presented an appraised value of $7,568,000.00 for the subject with primary emphasis given to the income approach and secondary consideration given to the market approach. Respondent's witness presented the cost approach as additional support, not a primary basis for the value conclusion.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2008 valuation of the subject property was incorrect. The Board relies on the income approach to determine the value of the subject property. The Board disagrees with elements in the analysis of both Petitioner and Respondent. The Board relies on the potential gross income presented by Petitioner, a 12% stabilized vacancy and collection loss estimate, a stabilized estimate of operating/maintenance/reserve expenses, Petitioner's estimate of CAM expenses, and Petitioner's overall capitalization rate. The Board concludes that the 2008 actual value of the subject property should be reduced to $6,690,000.00.

ORDER:

Respondent is ordered to reduce the 2008 actual value of the subject property to $6,690,000.00.

The Adams County Assessor is directed to change his/her 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 21st day of October 2009.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

MaryKay Kelley

MaryKay Kelley

Louesa Maricle

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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