

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FIRSTBANK OF AURORA,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 53835</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 8, 2011, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by David V. Cook, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Dockets 53835 and 53840 were consolidated for purposes of the hearing only.

Subject property is described as follows:

**5105 Chambers Road, Denver, Colorado
Denver County Schedule No. 00184-00-028-000**

The subject property is a one-story, free standing branch bank building with a gross building area of 5,212 square feet, according to Denver County records. The building was completed in 2002 and is situated on a 56,533 square foot pad site at a grocery store-anchored retail center. The building interior includes teller stations, offices, conference room, a vault, and other support areas. The site has small landscaped areas, lighted asphalt paved parking, and a drive-up ATM. The building is owner-occupied.

Petitioner is requesting an actual value of \$1,271,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$1,652,200.00 for the property.

Petitioner contends that Respondent has relied primarily on the cost approach to value without making adequate deductions for bank personal property. Respondent has not placed primary

reliance on the income approach, which Petitioner contends is the only approach that would be considered by a potential buyer.

Ms. Carolyn Carter, CPA and a Licensed Appraiser in Colorado, and Mr. Jeffrey M. Monroe, a Registered Appraiser, appeared as witnesses for Petitioner. Both witnesses are employed by Tax Profile Services. Ms. Carter presented an appraisal of the subject property using the cost and income capitalization approaches to value. Ms. Carter concluded there were insufficient market sales in Denver County to develop a market approach for the appraisal.

For the cost approach, Ms. Carter valued the land at \$838,900.00, rounded, using \$14.84 per square foot based on three land sales ranging in price from \$1.50 to \$16.70 per square foot. The Marshall & Swift cost estimator service was used to estimate the replacement cost of the improvements. The witness relied on a cost estimate produced using retail store occupancy cost figures as the basis. The witness testified that the retail store cost estimate is the most accurate because it excludes all bank fixtures that would be separately declared as personal property and retail is the most likely use for the building if it were vacant. Ms. Carter concluded to a depreciated cost of the improvements of \$511,109.00. This resulted in a combined rounded indication of value by the cost approach for the land and improvements of \$1,350,000.00.

Ms. Carter presented an income approach using direct capitalization methodology. The witness testified that she relied on the third party Ross Research Services survey of rental rates for mid-year 2008 for retail space in the subject's submarket, as defined by that source. The Ross survey does not provide rents for banks. The witness concluded to a rental rate of \$22.00 per square foot for the 4,648 square feet of primary bank space and \$10.00 per square foot for a 564 square foot storage area with roof access. The witness testified that actual leases signed during the base period were not provided as support because arm's-length transaction rents for banks on pad sites are difficult to obtain. Deductions from income were made for vacancy and collection loss, a management fee, and replacement reserve. The witness relied on the third party Smith/Burbach Real Estate Investment Survey, West/Central United States, from the summer of 2008 for the capitalization rate for free standing retail space and concluded to a rate for the subject of 7.5%. Capitalizing the net income estimate by this rate resulted in a rounded value by the income approach of \$1,271,000.00.

In summary, Petitioner presented the following indicators of value:

Cost:	\$1,350,000.00
Income:	\$1,271,000.00
Market:	Not used

Based on the income approach, Petitioner is requesting a 2009 actual value of \$1,271,000.00 for the subject property.

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser with the Denver County Assessor's office, presented all three approaches to value for the subject property and concluded to an indicated value of \$1,730,000.00 for the subject based on the cost approach.

For the cost approach, Respondent's witness used a state-approved cost estimating service to derive a market-adjusted replacement cost new estimate for the improvements. The witness applied bank building costs from Marshall & Swift and depreciation was deducted to derive a value for the improvements of \$935,300.00. The witness testified that the base costs from that source exclude banking fixtures or equipment, vault doors, or safe deposit boxes that would be considered personal property. Four land sales were presented ranging in price from \$14.08 to \$16.32 per square foot and the land was valued at \$14.00 per square foot or a total of \$791,500.00. The total estimate of value by the cost approach is \$1,726,800.00.

Respondent's witness presented an income approach with an indication of value of \$1,737,900.00 for the subject property. The witness concluded to a gross rental rate of \$29.00 per square foot and applied that to a rentable area of 4,648 square feet, excluding the storage space, which the witness concluded does not have a significant rental value. Deductions applied included vacancy and collection loss and operating expenses. The net operating income estimate was capitalized at a rate of 7.0%, derived from comparable sales in the Denver metropolitan area market.

Respondent's witness presented a market approach with four comparable sales of branch bank buildings ranging in price from \$169.00 to \$722.00 per square foot. The witness concluded to a market value of \$450.00 per square foot for the subject. Applying that to a building size of 4,648 square feet resulted in a value by the market approach of \$2,091,600.00.

Respondent's witness presented the following indicators of value and concluded to \$1,730,000.00 based on the cost approach.

Cost:	\$1,726,800.00
Income:	\$1,737,900.00
Market:	\$2,091,600.00

Respondent requested that the Board affirm the assigned actual value of \$1,652,200.00 for tax year 2009.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2009.

The Board concludes that Petitioner did not provide sufficient evidence that Respondent's cost approach did not accurately deduct personal property or that the use of cost figures for retail space is more accurate methodology. The Board concurs with Respondent that the Marshall & Swift cost service does not include the cost of most specialized fixtures and equipment in the base cost of structures, rather, they are factored in as adjustments to the base cost. The Board concludes that Respondent did not inflate the cost estimate by those items. The Board is not persuaded that the general published survey data for retail space rents and capitalization rates used for Petitioner's income approach is more accurate than Respondent's use of actual market data from the metropolitan area in estimating the value of the subject by that approach. Petitioner did not attempt to obtain actual lease rents from the market and relied only on a published market survey reporting capitalization rates desired by investors rather than on capitalization rates derived from actual concluded transactions. While that is acceptable methodology when better data is not available,

Respondent was able to provide market data from transactions that were confirmed with participants. The Board disagrees with Petitioner that it is inappropriate to use comparable sales located outside Denver County and agrees with Respondent that use of sales within the Denver metropolitan area is reasonable. Petitioner's contention that the income approach using rent for retail space is the only valuation method to rely on makes the assumption that branch bank buildings rarely, if ever, transfer to other banks. Further, it implies that all non-personal property bank fixtures and finishes are 100% functionally obsolete as soon as construction is completed. The subject property is occupied by a bank, which clearly gives value to those features of the building improvements. The Board concludes that the analysis presented by Respondent is more reliable.

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 1 day of April 2011.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Louesa Maricle

Louesa Maricle

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

Amy Bruins

Amy Bruins

