

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FIRSTBANK OF DENVER,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 61719</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2013, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Mitch Behr, Esq. Petitioner is protesting the 2011 actual value of the subject property.

The parties stipulated to the admission of Petitioner’s Exhibits 1 and 2, and Respondent’s Exhibits A and B, subject to the right to strike information from outside the statutory base period. The parties also stipulated to the admission of the expert witnesses.

The subject property is described as follows:

**1617 East Colfax Avenue, Denver, Colorado
Denver County Schedule No. 02355-36-028-000**

The subject property is a one-story, freestanding branch bank building with a gross building area of 5,881 square feet, according to Denver County records. The building was completed in 2007 and is situated on a 28,218 square foot site zoned Main Street Three. The construction is reinforced concrete frame with brick over concrete block exterior walls. The structure includes the primary bank space, storage, and an atrium vestibule that provides entry to the bank. 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. Petitioner purchased the subject site in April of 2005 and constructed the subject improvements for its own use.

Petitioner is requesting an actual value of \$1,632,500 for the subject property for tax year 2011. Respondent has assigned a value of \$2,000,000.

Petitioner presented the following indicators of value:

Market:	Not presented
Income:	\$1,632,500
Cost:	Not presented

Petitioner contends that the atrium vestibule space of the building and the storage area at the rear of the vestibule were added only to meet the Main Street Act zoning requirements and the atrium in particular is a super adequacy, providing no useful bank function. Therefore, the property has been over valued because a lower rent should be applied to the square footage of the vestibule and storage areas than to the bank area. Petitioner claims Respondent has not adequately adjusted the value for tangible and intangible personal property. Petitioner used a larger total square footage of 6,497 square feet comprised of 4,750 square feet of bank space, 1,347 square feet for the entry vestibule, and 400 square feet of storage space.

Petitioner's witness, Mr. Jeffrey M. Monroe of Tax Profile Services, presented an income approach to derive a going-concern value for the subject property. The witness applied a rental rate of \$35.00 per square foot for the bank space, which presumes the inclusion of personal property fixtures, and the witness testified is based on sale/lease-back rents for branch banks. A lower rent of \$12.00 was used for the vestibule and storage square footage, based on low end rates for small strip retail space in the midtown area obtained from a published third party survey. The witness applied deductions of 5% for vacancy, a 3% management fee, and 3% for reserves for replacement. A capitalization rate of 8.0% was selected based on investment survey data. From the initial indication of value, the witness deducted \$355,131 for tangible personal property fixtures, and \$35,660 for intangible personal property. Based on this analysis, Petitioner concluded to a value for the property of \$1,632,500.

Respondent presented the following indicators of value:

Market:	Not presented
Income:	\$2,395,400
Cost:	\$2,089,700

Respondent contends that Petitioner incorrectly used a going-concern value including business revenue, which is methodology used for hotels and motels, not banks or retail properties. As a result, Petitioner incorrectly deducted tangible and intangible personal property. Petitioner did not provide any support for the market rent used for the bank space or evidence to support Petitioner's claim that the rent includes personal property fixtures. Further, Petitioner's claim that a lower rent should be applied to the vestibule and storage space is not supported.

Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser with the Denver County Assessor's office, presented the cost and income approaches to value for the subject property.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject improvements of \$1,102,100. The witness testified that the 5,881 square foot building area was taken from the building plans. The cost estimate excludes bank fixtures that are

considered personal property. The witness presented four land sales that occurred during the base period, ranging in price from \$19.85 to \$85.92 per square foot. Three of the sales have Main Street zoning. A value of \$35.00 per square foot was assigned to the subject site for a total land value of \$987,600. Respondent's combined value of the property by the cost approach is \$2,089,700.

Respondent used the income approach to derive a value for the property of \$2,395,400. The witness presented summaries of four leases of bank space with rents ranging from \$25.47 to \$50.00 per square foot. Relying on Comparables 2, 3, and 4, the witness applied a triple net rental rate of \$35.00 per square foot to the 5,881 gross square footage of the building. The witness testified that lease rents for single tenant buildings already reflect the different uses and types of space within the total leased area. Deductions made included 2% for vacancy and collection loss, and 5% for operating expenses, excluding property tax. A tax loaded capitalization rate of 8.0% was selected after considering investment survey data from four national and local survey sources. The rent conclusion represents shell space, so an adjustment for personal property fixtures was not required.

Respondent's witness concluded to a final market value for the subject property of \$2,200,000, giving more weight to the income approach conclusion. Respondent assigned a lower actual value of \$2,000,000 to the subject property for tax year 2011.

Petitioner failed to present sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2011.

The Board finds that Petitioner did not provide any market evidence for the \$35.00 rate used for the bank office space. Petitioner did not provide market evidence that separate rental rates are negotiated for different types of space within a single tenant building. The Board is not persuaded by Petitioner's argument that because the vestibule was added to the design in order to meet the new zoning requirements and because it is not occupied by bank employees, a significantly lower rent for that space is justified. Regarding the tangible personal property deductions Petitioner made, the Board finds that no evidence was provided that the rental rate used includes those bank fixture items or the building skylight, which Petitioner claims is a FirstBank signature design item. Petitioner provided no evidence to support the claim that the rent used encompasses intangible assets such as internet domain name, name recognition, tap fees, or the other items deducted. Therefore, the Board concludes there is no support for Petitioner's deductions for tangible and intangible personal property. Though Respondent admits the lease evidence relied on is not perfect, the Board finds it is more persuasive than Petitioner's lack of any market evidence for the bank space rent used. Also, Respondent's income approach is supported by the cost approach analysis. The Board finds that the difference in the gross building area used by Respondent is in Petitioner's favor, so does not adversely affect value.

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 3rd day of April, 2013.



BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Louisa Maricle

Louisa Maricle

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

Milla Crichton

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