BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: DALES INVESTMENTS LTD, v. Respondent: BOULDER COUNTY BOARD OF EQUALIZATION.	Docket No.: 61818

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 12, 2013, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by Eric R. Steiner, Esq. Respondent was represented by Mark T. Doherty, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

1790 30th Street
Boulder, CO 80301
Boulder County Schedule No. R008014

The subject property is a 4-story office building constructed in 1974 and partially remodeled and updated in 1994. The first floor contains a lobby and several offices. The building has common restrooms on each floor and two elevators. The lobby was recently renovated. The upper two floors are finished as offices ranging from 104 square feet to 7,383 square feet in rentable area.

Petitioner presented the following indicators of value:

Market:	$5,006,169
Cost:	Not used
Income:	$4,698,994

Petitioner is requesting an actual value of $4,525,000 for the subject property for tax year 2012.

Petitioner's witness, Mr. Dewhitt Boice, Property Manager for the subject property, provided testimony regarding his role in managing the subject. Mr. Boice indicated he has been involved with the property since the mid 1980's when his father managed the property. Mr. Boice maintains an office in the building and describes his duties as management, leasing and bookkeeping. Agents from the Colorado Group, Inc. have been employed by Mr. Boice over the last ten years for tenant acquisition. Mr. Boice receives a 3% commission on lease renewals; the Colorado Group receives a 6% commission on new tenancies.

Petitioner's witness, Mr. Wade Arnold, a broker for the Colorado Group Inc., testified regarding his experience with the subject property. Mr. Arnold testified that the market in 2009 and 2010 was stagnant and that leases typically included one month per year of free rent as a concession. He indicated the building's location was between the downtown and suburban office markets; access was difficult as it allowed only a "right-out" exit; the building was "under parked" and less desirable due to 1970's style construction. Vacant space in the building is currently offered for $16.50 per square foot on a gross (full service) basis. Mr. Arnold testified that typical expenses on a triple net (NNN) lease range from $8.00 to $9.00 per square foot. He also indicated only one operator he is aware of includes a reserve for replacement in his rents.

Petitioner's witness,Mr. Roger Bruhn, Managing Principal with Property Tax Services, LLC, presented a market approach consisting of four comparable sales ranging in sale price from $3,075,000 to $10,900,000 and in size from 32,448 to 96,608 square feet. After adjustments were made, the sales ranged from $78.11 to $90.26 per square foot in unit value. Mr. Bruhn averaged the indications and concluded to a value by the market approach of $83.17 per square foot, or, $5,006,169.

Mr. Bruhn presented an income approach to derive a value of $4,698,994 for the subject property. Annual incomes for the subject were presented from 2007 through 2010. (The Board is not able to consider the full year information from 2010 as any information after June 30, 2010 is outside the base period (applicable base period for the 2012 valuation year is from January 1, 2009 to June 30, 2010)). Mr. Bruhn concluded to a 2011 and 2012 average Net Operating Income (NOI) of $408,812 based upon actual income. Mr. Bruhn presented six transactions from the Denver market from which he derived an average capitalization rate of 8.7%. Application of that rate to the subject's NOI produced an indication of $4,698,994.

In reconciliation, Mr. Bruhn placed 25% of the weight on the market approach and 75% on the income approach to conclude to a value of $4,775,788. A reduction of $250,781 was taken from that figure to represent deferred maintenance on the subject roof (ultimately repaired post the base period at the reported amount) and concluded to a final value estimate of $4,525,000 (rounded).

Respondent's witness, Samuel M. Forsyth, a Certified General Appraiser with Boulder County, presented the following indicators of value:

Market:	$5,417,300
Cost:	Not used
Income:	$5,860,300

Mr. Forsyth presented four sales ranging in sale price from $4,600,000 to $10,900,000 and in size from 35,882 to 97,666 square feet. After adjustments were made, the sales ranged from $89.68 to $92.63 per square foot in unit value. Mr. Forsyth averaged the indications to $89.90 (Mr. Forsyth's average is incorrect; the correct averaged value is $91.14) and concluded to a value by the market approach of $90.00 per square foot, or, $5,417,300 (rounded).

Mr. Forsyth used the income approach to derive a value of $5,860,300 for the subject property. Nine comparable rentals were presented from the CoStar Tenant© data base. Rents were reported from $10.00 to $15.00 per square foot on a NNN basis with one comparable at $18.00 per square foot gross. The average asking rate of the comparables was $12.46 per square foot. This figure was adjusted downward by 10% to reflect the anticipated contract rate of $11.20 per square foot (rounded to $11.00 per square foot). The NNN income was applied to the net rentable area of the subject building; along with reductions of 10% for vacancy and an additional 10% off of the collected incomes for expenses. Mr. Forsyth concluded to Net Operating Income of $468,051 which he capitalized at 8% (notably, Mr. Forsyth's report indicated a capitalization rate of 8.5%).

In a similar manner as Petitioner, Mr. Forsyth placed 25% of the weight on the market approach and 75% on the income approach to derive a final value estimate of $5,742,300 (rounded).

Petitioner contends that the actual income of the property must be considered. The subject is an older building that suffers from poor access and exposure. Petitioner also contends that leasing commissions and replacement reserves must be reduced from the NOI because these are actual expenses to the owner. Further, based upon testimony within the hearing, it is not possible to obtain $11.00 per square foot in NNN income at the subject property.

Respondent contends that Petitioner has incorrectly applied the income approach by calculating capitalization rates that do not include reserves or commissions and then applying those rates to the net income received by the owner after payment of reserves and commissions. Respondent also contends that the use of capitalization rates from the Denver market is unreasonable as the Boulder market is unique.

The Board finds Petitioner's income approach is not reliable as the capitalization rates supplied do not clearly indicate that both leasing commissions and a replacement reserve were considered in the calculations. In this regard, the Board offers the following:

Based upon the information provided by Petitioner's Exhibit C, the average of the 2007 to 2009 collected incomes prior to expensing leasing commissions and replacement reserves is $509,317. Leasing commissions averaged $34,011 over the three year span. Leasing commissions are appropriate "above the line" expenses. Reduction of this expense produces an adjusted NOI of $475,306. This figure, capitalized at Petitioner's overall rate of 8.7% produces an indication of $5,463,300 (rounded). Petitioner's own witness indicated it was not typical to include reserves in rents.

On the other hand, the Board was not compelled by Respondent's position. In addition to the numerous errors and corrections to Mr. Forsyth's written report, the Board noted a calculation error in the market approach indicating an average price of $91.00 per square foot to be more appropriate. Respondent's value indication should therefore be $5,477,500 (rounded).

The Board was also not persuaded by Respondent's income approach. The Board found Respondent's comparable rental at 1800 30th Street to be particularly instructive. This building appears quite similar to the subject in age, location, size and occupancy. At $18.00 per square foot gross, the adjusted asking rate would be $16.20 per square foot using Respondent's methodology. Petitioner's Sale 3 and Sale 4, both used by Respondent, state operating expenses ranging from $5.00 to $7.00 per square foot. Adopting $6.00 per square foot for expenses, produces a NNN rate of $10.20 per square foot.

Using Respondent's conclusions regarding vacancy and expenses, the Board finds:

Rentable Area:	52,531 Square Feet
NNN Rate:	$10.20
Potential Gross Income:	$535,816
Vacancy @ 10%:	($53,582)
Effective Gross Income:	$482,234
Expenses @ 10%	($48,223)
NOI:	$434,011
Capitalized @ 8%	$5,425,140
Capitalized @ 8.5%	$5,106,012

Mr. Forsyth indicated an 8% capitalization rate to be appropriate during testimony although he had concluded to an 8.5% in his report. No evidence was presented that compelled the Board to consider the 8% rate more supportable than the previous rate.

Both parties placed similar weight on the market and income approaches. The following is a summary of the Board's analysis of the information before it:

Petitioner	Value	Weight	Indication
Market:	$5,006,169	.25	$1,252,542
Income:	$5,463,300	.75	$4,097,475
		TOTAL:	$5,350,017
Respondent	Value	Weight	Indication
Market:	$5,477,500	.25	$1,369,375
Income:	$5,106,012	.75	$3,829,509
		TOTAL:	$5,198,884

Following the Board's calculations, there remains only a modest difference between the two value opinions. The Board has adopted $5,275,000 as appropriate.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2012 valuation of the subject property was incorrect.

The Board concludes that the 2012 actual value of the subject property should be reduced to $5,275,000.

ORDER:

Respondent is ordered to reduce the 2012 actual value of the subject property to $5,275,000.

The Boulder 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 20th day of August, 2013.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Gregg Near

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

Milla Lishchuk

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS