

<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>SAFEWAY, INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	<p>▲</p>
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Alan Poe, Esq. Address: 6390 East Crescent Parkway, Suite 400 Greenwood Village, Colorado 80111-2800 Phone Number: (303) 290-1600 E-mail: Attorney Reg. No.: 7641</p>	<p><b>Docket Numbers: 37100, 37101, 37102, 37103, 37107, 37118, 37119</b></p>
<p><b>ORDER (On Retaining Jurisdiction)</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 7, 8, and 17, 2001, Karen E. Hart, Mark R. Linné, and J. Russell Shaw presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by George Rosenberg, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**PERSONAL PROPERTY  
(Arapahoe County Schedule Nos. 25411-03787-015, 25411-03787-024,  
25411-03787-017, 25411-03787-003, 35411-03787-009, 35411-03787-  
002, 35411-03787-018)**

Petitioner is protesting the 2000 actual value of the subject properties, the personal property located within seven of Petitioner’s retail stores in Arapahoe County.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the data it provided to its compliance consultant contained assets that had been disposed of but not recorded on the company's accounting records. Petitioner further contends that the data included certain assets that would be considered real property within Colorado valuation procedures. Consequently, it is the Petitioner's position that the declaration filed by its compliance-consulting firm, based on the erroneous data, resulted in an inaccurate valuation by the Respondent of the assets subject to this proceeding. The Petitioner also believes that the process developed by its independent valuation consultant results in a value more reflective of market conditions as of the assessment date than the value derived by the Respondent using state mandated procedures.

### **Respondent:**

Respondent contends that the assigned value was determined using information reported by Petitioner and applying Division of Property Taxation guidelines, which are binding on all Colorado Assessors.

## **FINDINGS OF FACT:**

1. Seven dockets were consolidated into this hearing. In the interest of efficiency, Petitioner and Respondent selected a single location, Safeway #2138, located at 1730 S. Buckley Road, Aurora, with which to demonstrate the differences in the valuation process utilized by both parties.

2. Petitioner's initial witness was Mr. Michael J. Young, Principal with Stout, Coursey and Horning, P.A. (SCH); financial and accounting consultant to Safeway. Mr. Young holds the designations of Certified Public Accountant and Certified Valuation Analyst, and is Director of Audit and Litigation Support Services for his firm. As a part of his business, Mr. Young provides business valuation and state and local tax consulting services to his clients.

3. Mr. Young described the process involved within the scope of the engagement. His firm requested an electronic version of the Petitioner's fixed asset source data similar to that provided to and utilized by the Petitioner's compliance-consultant, Comprehensive Property Tax Service (CPTS). From CPTS, Mr. Young's firm requested a hard copy of the data provided to CPTS by Petitioner, and from which it developed and filed the Colorado personal property declaration schedules in question, as well as copies of those declaration schedules. The data SCH received from Petitioner was more current than the data Petitioner had supplied to CPTS.

4. Through a desktop review process, SCH then reconciled data from both reports to identify areas of inconsistency within the source documents. It was determined through this process that the Petitioner's source data included assets that were likely not on site as of the assessment date. Mr. Young described these assets as unrecorded disposals. Also during this review, his firm identified assets reported as personal property that should have been considered real property according to Colorado guidelines. His firm identified assets that had erroneously not been included in the declaration schedules. SCH also identified minor inconsistencies with respect to the acquisition date reported by CPTS. The compliance consultant has erroneously utilized the "set up" date from Petitioner's fixed asset records to indicate when an asset began service. Mr. Young testified that the "in service" date would have been the appropriate indicator of when the Petitioner started using a specific piece of equipment.

5. SCH then selected a representative sampling of 10 stores throughout Colorado for further review, including site inspection. SCH also hired BCS America (BCS), an asset valuation firm, to develop a valuation for the Petitioner's assets subject to this appeal. Both Mr. Young and Mr. Robert E. Lowry from BCS, participated in the inspections, all of which took place during the summer of 2000. Of these 10 inspected properties, two were located in Arapahoe County. Mr. Young indicated that the Buckley location was not included in this initial tour but that both himself and Mr. Lowry had inspected that location, as well as each of the others subject to this appeal within the past several weeks.

6. The Petitioner's witness identified Exhibit P as being a demonstration of the documents and process utilized to analyze the Buckley location. He testified that page 36 is the reconciliation report generated as a result of his analysis. Pages 37 and 38 were presented as being a list of the unrecorded disposals identified at that location. Page 39 noted the existence of assets identified as being within the classification of real property for Colorado property tax purposes. Page 40 listed one asset that was erroneously not included in the original filing.

7. Mr. Young testified that most companies do not necessarily have an accurate paper trail identifying the final disposition of retired assets. He noted that the majority of the unrecorded disposals involve assets that are fully depreciated for Federal tax purposes. Consequently, there is minimal incentive for the companies to keep accurate records of transactions involving asset disposals. SCH communicated the apparent existence of inconsistencies it found within the source data to the Petitioner. Accordingly, the Petitioner has adopted a process to address the issue of unreported disposals on a going-forward basis.

8. The witness identified equipment such as HVAC and related property as falling within the real property classification. Specific to the Buckley location, he included the "air curtains" typically located at entrances as well as the power management systems that operate the equipment. Walk-in coolers were concluded to be real property based on potential damage to the structure if removed. However, in recognizing that Colorado guidelines require inclusion of walk-in coolers as personal property, Mr. Young did not include those assets in his list of real property items to be removed. As noted earlier, page 39 of Exhibit P provides an itemized list of all assets identified as being real property for the Buckley facility.

9. The witness provided testimony regarding the inclusion of a listing for items described as “assets previously reported.” This list resulted from the reconciliation of data between the two fixed asset sources identified earlier in his testimony. In the case of the Buckley location, one asset was included in the list found on page 40 of Exhibit P.

10. Mr. Young testified that Exhibits Q through V represent similar analyses for each of the subject locations other than the Buckley location. Those exhibits include a reconciliation report, as well as itemized lists of unrecorded disposals, real property and assets not previously reported. Those exhibits do not include the level of detail found in Exhibit P. He further testified that Exhibit B represents the reconciled list of reportable assets for each location subject to this appeal.

11. Petitioner’s witness testified that as a means to test the reasonableness of his process, he compared the costs resulting from his analysis and reconciliation to industry cost data found within the Marshall Valuation Service cost manual. As shown in Exhibit J, the Marshall manual suggests a range of \$19.75 to \$32.75 per square foot of facility as a reasonable replacement cost for fixtures and equipment specific to food and beverage markets. Mr. Young testified that his analysis of the Petitioner’s fixed asset data by locations demonstrated a cost of approximately \$30.00 per square foot, which is near the upper end of the Marshall range.

12. The line item data resulting from SCH’s efforts was then provided to BCS America as a starting point from which Mr. Lowry could begin his valuation process. Mr. Young referred to Exhibit M, that he testified as including correspondence to the Arapahoe County Assessor, that served as a transmittal letter for amended declarations filed by SCH on behalf of Petitioner. That correspondence stated the basis for the Petitioner’s appeal and outlined the pertinent issues involved – unrecorded disposals and real property assets reported as personal property. He also noted that Exhibit M included correspondence from Mr. Lowry that resulted from his preliminary valuation analysis. The last item in Exhibit M referred to by the witness was correspondence from the Petitioner indicating that the procedures utilized by SCH in their analysis have adequately demonstrated the existence of inaccuracies within the fixed asset database that resulted in the filing of inaccurate declarations.

13. Under cross-examination, Mr. Young testified that he recognizes that assets still in service but which are fully depreciated from a federal tax perspective, must continue to be reported for property tax assessment.

14. In questioning from the Board, the witness acknowledged that some in-service dates could be a result of internal transfers and not represent a new acquisition of an asset. He further confirmed that to the best of his knowledge, all reported costs included freight, tax and installation.

15. Petitioner's second witness was Mr. Richard E. Lowry, Senior Vice President, BSC America, an asset valuation and consulting firm. In his career, he developed and engineered equipment for a wide variety of industries, including grocery retailers. He has an extensive background in the valuation of assets in bankruptcy proceedings. He manages aftermarket sales of equipment, including grocery equipment. He specializes in the valuation of assets for a variety of purposes including liquidations, to establish fair market value, and for secured creditor transactions. He does not appraise real property. Of his approximately 3,000 assignments, 100 have been for grocery clients including Giant Foods. He testified that his assignment with respect to this client was to determine the fair market value as of January 1, 2000, for the assets in Petitioner's retail locations within Colorado.

16. Mr. Lowry described the process used to complete his assignment. He first reviewed the assets list provided to him by SCH. He analyzed comparative historical costs for similar assets both within the Petitioner's cost database as well as from competitors. He contacted suppliers to determine normal life expectancy of typical assets. Based on the information from these suppliers, he categorized the assets in a matrix by depreciable life. He then worked with SCH to identify representative stores with which to build a model for Colorado.

17. As noted earlier in Mr. Young's testimony, Mr. Lowry confirmed that during the valuation process he visited the 10 stores, including two in Arapahoe County. He further confirmed that he had recently visited each of the 7 stores in Arapahoe County subject to this appeal. During these inspections, he analyzed equipment in the stores with respect to age and condition. He confirmed that a representative sampling of the items shown on the asset list were in place and in service. He also tested the reasonableness of the costs shown for items on the lists. Included in his analysis were discussions of equipment life and maintenance issues with Safeway representatives, locally and at the national level. To assist the Board in understanding the types of assets considered in the valuation process, the witness referred to IIB of Exhibit A, a photographic record of fixtures and equipment typically found in a Safeway facility.

18. The witness presented testimony regarding the nature of accelerated physical depreciation to grocery fixtures and equipment in comparison to other types of retailers. He identified several catalysts for unusual wear and tear on grocery equipment including retrofitted produce misting systems in produce cases, harsh cleaning chemicals, extended hours of operation, and abuse to equipment during the course of normal business by both customers and employees.

19. Mr. Lowry testified that besides the existence of traditional grocery equipment, Petitioner's facilities also house equipment in support of bakery, butcher, delicatessen, and take-away food preparation operations. His analysis indicated that refrigeration cases of various types account for approximately 30% of the equipment and fixture costs for a typical facility.

20. He testified that he contacted suppliers, used equipment dealers, and other experts to determine market conditions and “used” equipment values for the various types of equipment typically found within the Petitioner’s stores. According to the information provided by these sources, the market for this type of equipment ranges from a buyer needing identical replacement equipment down to the “mom and pops” who are concerned with functionality of a piece of equipment but that do not care about size, color or other physical attributes. In his investigation, Mr. Lowry sent inquiries to 150 grocery related businesses to determine how Colorado fits into the national used equipment market as of January 1, 2000. His survey included approximately 30 local businesses. Responses to those inquires indicated that south Florida and southern California were the strongest markets for used equipment as of January 2000. Colorado was identified as being a soft market at that time.

21. Mr. Lowry then began his testimony with respect to how he utilized the information received from these sources in developing his valuation model. Petitioner’s Exhibit I included 17 reports developed by Mr. Lowry titled “Personal Property Data Sheets.” According to Mr. Lowry, each sheet represented the results of his analysis for the various equipment types found in a store and was a graphic comparison of historical age to either witnessed condition or presumed condition by industry standards at relative milestones throughout the life of an asset. The witness testified that he used the results demonstrated in the data sheets to create the “Condition/Depreciation Matrix Schedule” found in Exhibit K. This matrix is segregated into four categories based on life expectancies of up to 5 years, from 5 but less than 10 years, from 15 to possibly 20 years, and assets expected to last approximately 20 years. Each asset type is matched to a presumed condition at specific stages of historical life. Each condition corresponds to a percentage of replacement cost. From this matrix model, Mr. Lowry extracted his opinion of value for each type of asset included in the analysis.

22. The witness testified that because his analysis focused on the used equipment market, he did not utilize any inflationary indexes to develop a replacement cost new for any assets. He also did not consider labor costs applicable to installation of an asset because, in his experience, those costs are lost in a market transaction to a third-party buyer.

23. Petitioner’s witness testified that Exhibit B is his demonstration of how he utilized the technique described above to arrive at an indicated value for each location. As was testified earlier, Exhibit B began as a list of assets supplied to him by SCH. In this form it is a value per asset listing sorted by store, asset type, acquisition year, and cost with a value resulting from application of his matrix model to each asset. Mr. Lowry referred to Exhibit N and testified that this document is a schedule showing a recap of his fair market value estimates for each of the seven Arapahoe County store locations subject to this appeal.

24. The combined analysis of SCH and Mr. Lowry resulted in the following values based on the cost approach:

Schedule # 25411-03787-009	Safeway #8	\$325,667.00	(Docket No. 37107)
Schedule # 25411-03787-002	Safeway #17	\$323,516.00	(Docket No. 37118)
Schedule # 25411-03787-018	Safeway #137	\$342,581.00	(Docket No. 37119)
Schedule # 25411-03787-015	Safeway #139	\$307,993.00	(Docket No. 37100)
Schedule # 25411-03787-024	Safeway #1040	\$363,402.00	(Docket No. 37101)
Schedule # 25411-03787-017	Safeway #2138	\$363,418.00	(Docket No. 37102)
Schedule # 25411-03787-003	Safeway #3007	\$156,925.00	(Docket No. 37103)

25. Under cross-examination, Mr. Lowry testified that he had not considered or physically inspected comparable businesses in Colorado such as King Soopers or Albertson's in developing his valuation for the Petitioner's assets. He did testify that he had spoken with maintenance representatives at King Soopers in the course of his investigation. To clarify a statement made in a document within Exhibit M, he testified that these competitors use the same makes but likely different models of equipment than does Safeway. He admitted that he has had no assignments from Dillon Stores, the parent company of King Soopers, but has sold equipment to Albertson's. He further testified that historical cost equates to replacement cost new in his valuation model.

26. Mr. Lowry admitted that he had no familiarity with Division of Property Taxation (DPT), its Assessors Reference Library (ARL) materials or court mandated directives to local assessors to utilize the DPT developed guidelines in valuing personal property. He testified that he did not apply any state mandated guidelines in establishing the fair market values for Petitioner's assets.

27. Under questioning regarding the catalysts to accelerated depreciation he had provided earlier in his testimony, Mr. Lowry testified that retrofitting of equipment is unusual and that replacement is the norm. He also indicated that the costs associated with refurbishing a piece of equipment have not been included in his analysis. In his experience, refurbishing equipment would help it maintain its current value but would not return the value to an "as new" level. He further noted that in his experience, planned obsolescence seems to exist in some equipment manufacturer processes.

28. Petitioner's witness testified that his matrix model is based on sales of equipment and other data provided by dealers. He testified that he did not have a written list of actual sales, nor had he collected copies of invoices from the resale dealers he had contacted. His experience is that dealers typically do not provide oral or written quotes for specific pieces of equipment during the course of investigations of the type undertaken by Mr. Lowry during this assignment. Though he was able to secure specific quotes from one supplier, most of his data was in the form of notes from the discussions with the suppliers contacted. He also testified that he accessed supplier websites during the course of his research to obtain asking prices for some items. It has been his experience that the prices listed on these websites are asking prices and represent prices above what an actual transaction would indicate. The witness testified that he had attempted to verify the prices found on the Internet by contacting the suppliers directly.

29. In response to a question from the Board, Mr. Lowry testified that extended hours of operation impact the value of many assets within a store such as Safeway. He noted several observed conditions, but admitted that he had not correlated his observations with any quantified facts or maintenance costs. He also testified that remodeling projects, resulting in replacement of equipment, is a marketing department decision driven typically by declining product sales.

30. Under redirect testimony, the witness noted that in discussions with specific regional suppliers outside the Colorado marketplace, specifically Marchenese Refrigeration and Archtic, these sources indicated to him that during the Colorado data collection period a flood of used equipment came into the national market and generally provided a negative impact to the market values for this type of equipment.

31. Petitioner is requesting a 2000 actual value for the subject properties of:

Schedule # 25411-03787-009	Safeway #8	\$325,667.00	(Docket No. 37107)
Schedule # 25411-03787-002	Safeway #17	\$323,516.00	(Docket No. 37118)
Schedule # 25411-03787-018	Safeway #137	\$342,581.00	(Docket No. 37119)
Schedule # 25411-03787-015	Safeway #139	\$307,993.00	(Docket No. 37100)
Schedule # 25411-03787-024	Safeway #1040	\$363,402.00	(Docket No. 37101)
Schedule # 25411-03787-017	Safeway #2138	\$363,418.00	(Docket No. 37102)
Schedule # 25411-03787-003	Safeway #3007	\$156,925.00	(Docket No. 37103)

32. Mr. Sonny Osterberg, an Appraiser/Supervisor in the Personal Property Department with the Arapahoe County Assessor's Office, appeared on behalf of the Respondent. He had examined Petitioner's property declarations for the past 6 years, but has not performed any appraisals other than for property tax purposes.

33. Exhibit 1 is a summary appraisal for the Buckley location that Mr. Osterberg had developed personally. The witness testified that he had applied the same methodology to each of the 7 locations subject to this appeal. For the Buckley facility, he calculated a value of \$827,463.00 for June 30, 1998. To that value, he applied the DPT developed rollback factor to bring the value back to the level of value date.

34. Mr. Osterberg described the process he used to establish the value for the Buckley location utilizing data provided to his office by the Petitioner. For this exercise, the witness accepted the historical costs as submitted by the Petitioner. As per DPT guidelines published annually in the ARL, Volume 5, an index factor was applied to these historical costs to achieve replacement cost new. Each asset was classified according to these same DPT guidelines. A percentage good factor extracted from the DPT developed tables was applied to each asset based on age. The final step was to apply a reverse index factor to bring the value back to what it would have been on the level of value date. Page 19 of Exhibit 1 is an example of the process utilized to value a sample asset.



35. The witness then presented Exhibit 5, a copy of Petitioner's 2000 personal property declaration schedule for Safeway Store #2138 located on Buckley Road. Mr. Osterberg testified that this document provided the source of historical cost data used in the valuation process. Along with the declaration, Exhibit 5 included a worksheet provided by CPTS demonstrating the reported costs and an estimate of the resulting values. The exhibit also included an assessment appraisal worksheet prepared by the Assessor's office segregating the assets reported for the Buckley location by the applicable classifications and economic lives.

36. As required by Colorado statute, Mr. Osterberg attempted to develop a value based on the Sales Comparison Approach. Pages 20 and 21 of Exhibit 1 document the process he undertook in order to meet this requirement. His investigation included discussions with dealers in used equipment in the local marketplace. His research of the local market indicates that Dooley Equipment is the primary provider of used equipment to the marketplace. Though he spoke with Mr. Dooley, the witness testified that he ultimately did not use the sales comparison approach to establish the value. He was not able to secure sufficient reliable data to establish a trend.

37. Mr. Osterberg also attempted to develop a valuation through the income approach. Page 22 of Exhibit 1 is a discussion of the limitations that rendered the income approach as inapplicable to this valuation. Referring to that section of the exhibit, the witness testified that insufficient income and expense data was available with which to develop a value indicator.

38. The witness testified that his reconciled value for the Buckley location weighted solely on the cost approach was \$827,463.00. Exhibit 4 lists the reconciled values for the remaining 6 locations consolidated into this proceeding. By location, the witness's reconciled values for the subject properties are as follows:

Schedule #25411-03787-009	Safeway #8	\$791,860.00	(Docket No. 37107)
Schedule #25411-03787-002	Safeway #17	\$768,296.00	(Docket No. 37118)
Schedule #25411-03787-018	Safeway #137	\$869,420.00	(Docket No. 37119)
Schedule #25411-03787-015	Safeway #139	\$705,133.00	(Docket No. 37100)
Schedule #25411-03787-018	Safeway #1040	\$711,890.00	(Docket No. 37101)
Schedule #25411-03787-017	Safeway #2138	\$827,463.00	(Docket No. 37102)
Schedule #25411-03787-003	Safeway #3007	\$711,890.00	(Docket No. 37103)

39. In rebuttal to testimony presented by the Petitioner's witnesses regarding unrecorded disposals, Mr. Osterberg testified that in reviewing each of the Petitioner's property declaration schedule filed for the years 1996 through 2000, he noted decreases in year-to-year comparison of reported costs. To him these changes indicated that disposals were being identified and removed from the company financial records. He did testify that he was unable to track specific disposals because the initial reports by the Petitioner were in summary form with little detail included. The witness reported that he had no information regarding the accuracy of the data provided to CPTS by the Petitioner for the purpose of filing property declarations.

40. The witness testified that the valuation of personal property is a compliance driven, self-reporting process in which the result depends directly on the accuracy of data provided by the taxpayer. He did inspect each of the seven locations in question during the course of his valuation process.

41. Under cross-examination, Mr. Osterberg reconfirmed that his valuations had been developed using the mandated DPT guidelines. He indicated that even though the process is fairly mechanical in nature, appraiser judgment came into play when applying depreciation tables to each category of assets. He testified that his market research did not provide evidence that additional obsolescence was applicable to any of the assets; therefore, all equipment appraised was presumed to be in average condition. He had not attempted to compare the Petitioner's per square foot replacement cost new (RCN) with the Marshall Valuation Service data found in Exhibit J.

42. The witness testified that during the course of his visits to the seven locations under appeal, he did not do an itemized inventory. He further testified that he concurs with the Petitioner's characterization of the three assets in the Buckley location as being real property. In his review of the real property records for these locations, he could find no evidence that walk-in coolers had been included in the real estate value.

43. Respondent assigned actual values to the subject properties for tax year 2000 as follows:

Schedule #25411-03787-009	Safeway #8	\$791,860.00	(Docket No. 37107)
Schedule #25411-03787-002	Safeway #17	\$768,296.00	(Docket No. 37118)
Schedule #25411-03787-018	Safeway #137	\$869,420.00	(Docket No. 37119)
Schedule #25411-03787-015	Safeway #139	\$705,133.00	(Docket No. 37100)
Schedule #25411-03787-024	Safeway #1040	\$711,890.00	(Docket No. 37101)
Schedule #25411-03787-017	Safeway #2138	\$827,463.00	(Docket No. 37102)
Schedule #25411-03787-003	Safeway #3007	\$360,498.00	(Docket No. 37103)

44. To assist the Board in reaching a conclusion for all of the locations subject to this appeal, Petitioner and Respondent provided additional data as requested by the Board for the remaining six locations at a level of detail consistent with what had been offered for the Buckley location. This data was admitted as Exhibits V through CC and 14.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2000. Petitioner's witness, Mr. Young, presented a well-organized reconciliation and analysis with respect to identifying and classifying the assets likely in place at the subject facilities as of January 1, 2000.

2. Respondent relied on reported information from Petitioner and rightfully expected the supplied information to be accurate. Respondent assumed the information given on the form included a complete listing of acquired and disposed assets. Testimony indicated that a Petitioner representative under penalty of perjury completed the subject declaration forms. However, Respondent's witness, Mr. Osterberg, did not conduct a physical audit of the property and, therefore, could not testify as to whether the information he relied upon was, in fact, accurate. Neither did Petitioner's witness Mr. Lowry conduct a physical audit; Mr. Young's firm, SCH, provided him with his listing. The Board believes that Petitioner's asset listing as presented at this hearing is more complete than the information previously supplied to Respondent, but notes that the listing was not confirmed by a physical audit by either party.

3. The Board could give little weight to Mr. Lowry's value conclusion. Mr. Lowry was unconvincing in his explanation of the matrix model used to develop valuations for the assets. This model was described as a cost approach, with market-driven depreciation based on sales of used equipment. He purported to have researched the national and local markets to determine trends applicable to grocery equipment in Colorado. He testified that his model is an accurate indicator of value as a function of original/historical cost.

4. Although the Board commends Mr. Lowry for creating a unique method to address a difficult issue, the valuation of personal property, we note that his value conclusions were not supported by any hard evidence. Mr. Lowry was unable to provide even a single specific example of an asset that originally sold new and then later sold in a used market to establish how his model value was developed. He was unable to provide this Board anything other than oral recaps of discussions with third-party vendors regarding market information and conditions.

5. Mr. Lowry also did not provide any tangible evidence to support his opinion as to the effect of extended hours or maintenance schedules on individual assets.

7. However, the Board is persuaded that Respondent's appraiser could have used the amended declaration schedules provided to him by Mr. Young's firm to establish a reasonable starting point, being original cost information, for appraising the assets using the DPT manual procedures. The testimony indicates that Mr. Osterberg received the amended schedules with sufficient time to recalculate and provide adjusted values to the Petitioner. Mr. Osterberg acknowledged that Petitioner was correct in eliminating real property items and unrecorded disposals from asset lists.

8. We recognize the time and resource restrictions placed on the Assessor's office in the performance of its duties. We also acknowledge that the Assessor's office is required to follow DPT directives in the valuation process. However, when an appeal gets to this level, it is incumbent on the Respondent to prepare a valuation using all available data and information. We note that even though the Respondent's appraisal report as presented to the BAA was prepared after the amended schedules were filed, Respondent's appraiser did not take advantage of the more accurate information made available to him to develop a more reliable value indicator; Respondent did not dispute the accuracy of Petitioner's amended declaration schedules.

9. Respondent, at a minimum, should have removed the mistakenly reported real property assets and the unrecorded disposals, and should have added the originally omitted property, if any. Failing to do so resulted in knowingly taxing assets that no longer existed, as well as taxing the real property assets incorrectly.

**ORDER:**

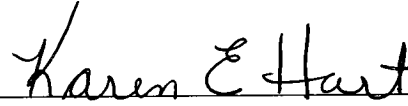
The Board orders the Respondent to recalculate the values for each of the Petitioner's seven store locations by applying the methodology provided by the DPT to the amended, itemized asset listings as shown in Exhibit B.

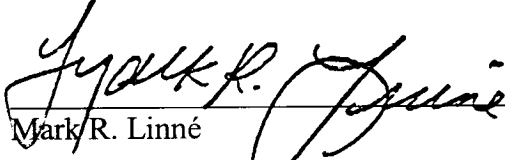
Respondent is further ordered to submit to the Board both the newly calculated total values by store location, and the worksheets used to derive said values. Upon receipt of the new values and worksheets, the Board will determine if the adjusted valuation will be accepted, or whether further hearings will be necessary.


The Board retains jurisdiction for a period of 15 calendar days from the date of this order to allow Respondent time to recalculate the subject property values based on the aforementioned order.

**DATED and MAILED** this 10<sup>th</sup> day of September, 2001.

**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
Karen E. Hart

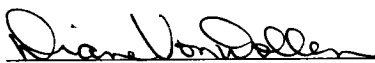
  
\_\_\_\_\_  
Mark R. Linné

  
\_\_\_\_\_  
J. Russell Shaw

This decision was put on the record

SEP 10 2001

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

  
\_\_\_\_\_  
Diane Von Dollen

37100.et.al.02



<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>SAFEWAY, INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Alan Poe, Esq. Address: 6390 East Crescent Parkway, Suite 400 Greenwood Village, Colorado 80111-2800 Phone Number: (303) 290-1600 E-mail: Attorney Reg. No.: 7641</p>	<p><b>Docket Numbers: 37100, 37101, 37102, 37103, 37107, 37118, 37119</b></p>
<p><b>FINAL ORDER (On Retaining Jurisdiction)</b></p>	

**THE BOARD OF ASSESSMENT APPEALS** retained jurisdiction in this matter until two weeks from its September 10, 2001 Order, at which time the Respondent was to notify the Board in writing of the 2000 actual valuations of each of the Petitioner's seven store locations. Having received such notification, the Board now makes the following findings of fact, reaches the following conclusions, and orders the following order.

**FINDINGS OF FACT:**

1. On September 25, 2001, the Board received Respondent's adjusted values for the subject properties.

2. The adjusted values for the subject properties are as follows:

<u>Docket Number</u>	<u>Schedule Number</u>	<u>Store Number</u>	<u>Ordered Recalculated Value</u>
37107	25411-03787-009	8	\$687,511.00
37118	35411-03787-002	17	\$686,687.00
37119	25411-03787-018	137	\$838,319.00
37100	25411-03787-015	139	\$616,957.00
37101	25411-03787-024	1040	\$689,530.00
37102	25411-03787-017	2138	\$788,285.00
37103	25411-03787-003	3007	\$302,831.00

3. On October 5, 2001, the Board received Petitioner's Response to Respondent's Worksheets. In summary, Petitioner conceded that Respondent had used Petitioner's amended itemized asset listings to arrive at the adjusted valuations. However, Petitioner contended that Respondent did not fully comply with the Board's order in that it did not recognize additional depreciation as required by the Division of Property Taxation ARL Volume 5, and continued to include labor costs that Petitioner contended should be excluded.

4. In its response, Petitioner requested "that the Board issue an order requiring the CBOE to submit revised worksheets in which (A) the values assigned to Safeway's personal property are reduced to reflect abnormal physical condition, functional and economic obsolescence, and other factors that affect the value of Safeway's personal property, and (B) no value is attributed to the labor costs."

5. On October 17, 2001, the Board received Respondent's Reply to Petitioner's Response. In summary, Respondent contended that it had fully complied with the Board's order and requested "the Board strike in its entirety or in the alternative find that 'Petitioner's Response To Respondent's Worksheets' are without merit...."

6. On October 18, 2001, the Board received Petitioner's Reply Memorandum, which continued Petitioner's original request for revised worksheets and values as stated in Finding 4 above.

7. The Board finds Petitioner's request is without merit.

8. The Board recognizes that Petitioner argued in the hearing that additional deductions should be applied to its personal property for additional wear and tear factors. However, Respondent's witness specifically rebutted Petitioner's evidence that such abnormal factors should be applied, as noted in the Board's order at Finding of Fact 41 of the Board's September 10, 2001 order. Based on the submitted evidence presented in the hearing, the Board was not convinced that Safeway's personal property was subject to abnormal physical condition, depreciation, or any other factors that should further reduce the valuation of the subject property.

9. The Board believes that the Division of Property Taxation ARL Volume 5 is clear that personal property "original installed cost includes the purchase price of the item, freight to the point of use, applicable sales/use tax and any installation charges necessary to ready the property for use in the business location." The Board determines that installation charges would include labor costs needed to ready the property for use.

10. The Board finds that Respondent has fully complied with the Board's order and that further hearings are not necessary. The Board accepts Respondent's submitted revised valuations.

**ORDER:**

Respondent is ordered to change the 2000 actual values of the subject properties as reflected in Finding 2 above.

The Arapahoe County Assessor is directed to change his records accordingly.

Petitioner's requests to revise Respondent's worksheets are denied.

**APPEAL:**

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

**DATED and MAILED** this 14<sup>th</sup> day of November, 2001.

**BOARD OF ASSESSMENT APPEALS**

Karen E. Hart  
Karen E. Hart

Mark R. Linné  
Mark R. Linné

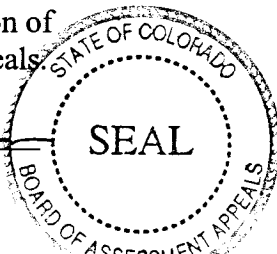
J. Russell Shaw  
J. Russell Shaw

This decision was put on the record

NOV 13 2001

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

Diane Von Dollen  
Diane Von Dollen



**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

Petitioner:

**SAFEWAY, INC.,**

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF EQUALIZATION.**

Attorney or Party Without Attorney for the Petitioner:

Name: Alan Poe, Esq.  
Address: 6390 East Crescent Parkway, Suite 400  
Greenwood Village, Colorado 80111-2800  
Phone Number: (303) 290-1600  
Attorney Reg.: #7641

**Docket Nos.: 37100,  
37101, 37102, 37103,  
37107, 37118, 37119**

**ORDER (ERRATA)**

The Board received a letter from Respondent on November 29, 2001. Based on the Board's review of this Order, the Board hereby issues this Order on Errata. The Board hereby amends its November 14, 2001 Final Order (On Retaining Jurisdiction) to reflect the following:

Under **FINDINGS OF FACT, Paragraph No. 2**, it is hereby amended to read:

**Docket Number 37118      Schedule No. 25411-03787-002**

In all other respects, the November 14, 2001 Order shall remain in full force and effect.

**DATED** this 30th day of November, 2001.

**BOARD OF ASSESSMENT APPEALS**

This decision was put on the record

**NOV 29 2001**

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

*Diane Von Dollen*  
Diane Von Dollen

*Karen E Hart*  
Karen E. Hart

*Mark R. Linné*  
Mark R. Linné

*Russell Shaw*  
Russell Shaw

