BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioners: **YOUNGFIELD PLAZA LLC. AND** **L & B KUNZ CO.,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	
Attorney or Party Without Attorney for the Petitioners: Name: Ralph H. Jacobson, Agent R. H. Jacobson & Co. Address: 2861 Kendrick Street Golden, Colorado 80401 Phone Number: (303) 278-2185 Attorney Reg. No.:	**Docket Number: 37989**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on July 30, 2001, Mark R. Linné, Claudia D. Klein, and Karen E. Hart presiding. Petitioners were represented by Ralph Jacobson, Agent. Respondent was represented by Martin McKinney, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

LOT 1 YOUNGFIELD PLAZA 20 03 69 SW
(Jefferson County Schedule No. 408379)

Petitioners are requesting an abatement/refund of taxes on the subject property for tax years 1998 and 1999. The subject property consists of two buildings built in 1982, comprising an industrial warehouse/office facility. The total improvement square footage is 131,225. The property is located at 4096 Youngfield Street in Wheat Ridge, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the property is overvalued according to the market and income approaches to value. His comparables are better than Respondent's and support a lower value. He relied most on the income approach, with the major differences between his approach and Respondent's being the calculation of replacements for reserves and the vacancy rate.

Respondent:

Respondent contends that the subject property was properly valued using all three approaches to value. Petitioners used sales comparables that occurred outside Jefferson County, which are not comparable in location to the subject property. Petitioners' income approach methodology is flawed.

FINDINGS OF FACT:

1. Petitioners' witness, Mr. Ralph Jacobson, owner of R.H. Jacobson & Co., presented the following indicators of value:

	Tax Year 1998	Tax Year 1999
Market:	\$3,608,688.00	\$3,805,525.00
Income:	\$3,730,112.00	\$4,640,722.00

2. Based on the market approach, Petitioners' witness presented an indicated value of \$3,608,688.00, at \$27.50 per square foot, for the subject property for tax year 1998.

3. Petitioners' witness presented 3 comparable sales for tax year 1998, ranging in sales price from \$23.92 to \$33.39 per square foot and in size from 30,022 to 106,085 square feet. There were no adjustments made to the sales prices.

4. Based on the market approach, Petitioners' witness presented an indicated value of \$3,805,525.00, at \$29.00 per square foot, for the subject property for tax year 1999.

5. Petitioners' witness presented 4 comparable sales for tax year 1999, ranging in sales price from \$28.70 to \$33.17 per square foot and in size from 89,909 to 174,207 square feet. There were no adjustments made to the sales prices.

6. Mr. Jacobson testified that the owner, Mr. Lee Kunz, built the subject property in 1982. Mr. Kunz and his brother have been in the building business for several decades. The subject property consists of two buildings totaling 131,225 square feet. The property use is approximately 53% office space, 15% laboratory, and 32% warehouse. The subject property is visible from Interstate 70, but does not have convenient access. Mr. Kunz has his offices here, and therefore provides on site leasing, management, and maintenance.

7. Mr. Jacobson briefly described his market comparables. He feels that his Comparable 1 is a good comparable. Comparable 2 is also a good comparable. It has multiple buildings, like the subject property, backs to Interstate 70, and is also located near a major arterial street, Peoria Street, on the west. His Comparable 6 is a "pretty" property for a warehouse, but it has a 17% vacancy rate, which is high. He concluded that the 1998 value should be $27.50 per square foot, and the 1999 value should be $29.00 per square foot via the market approach.

8. Petitioners' witness did not present a cost approach to value for the subject property. Mr. Jacobson testified that he would not address the cost approach.

9. Petitioners' witness presented an income approach to derive a value of $3,730,112.00 for tax year 1998, and $4,640,722.00 for tax year 1999 for the subject property.

10. Mr. Jacobson testified that the subject property information was accurate and needed no corrections. He pointed out that the subject property did not experience any management expenses; this was atypical and was a result of Mr. Kunz having his offices located at the subject property. The subject property is well managed and the leases are at market rates.

11. Mr. Jacobson testified that pages 110 through 113 in his exhibit were excerpts from the Division of Property Taxation Income Approach course material for developing reserves for replacement. He used these standards to establish his reserve expense.

12. Mr. Jacobson testified that he felt a base capitalization rate of 10% was appropriate. He added a tax rate of 2.8%, for a total cap rate of 12.8%.

13. Mr. Jacobson testified that he added together the annual income for years 1996 and 1997 and divided by 2 to get the average annual income for tax year 1998. He added together the annual income for years 1997 and 1998 and divided by 2 to get the average annual income for tax year 1999.

14. Mr. Jacobson testified that Respondent valued the subject property as commercial; however, the zoning is industrial. An industrial classification would result in more than a million dollar difference in the land value; Jefferson County values commercial land at $5.25 per square foot versus industrial land values at $2.75 per square foot.

15. Under cross-examination, Mr. Jacobson admitted that the 10% vacancy rate he used was not the actual vacancy of the subject property. He used 10% because that is what he thinks it should be, based on what an investor would expect. He did not personally investigate vacancy rates; he relied on the opinion of an MAI appraiser. He admitted that the property taxes he used were listed under the incorrect years in his income approach.

16. Upon questioning from the Board, Mr. Jacobson testified that he did not know the amount of the 1995 taxes paid in 1996. The subject property leases are graduated, 3-year leases. He believes the main difference in his valuation methodology versus Respondent's is in the vacancy and reserves calculations. There are 39 leases for the subject property; it is probably not 100% occupied but he is not sure. He believes that perhaps there should be a 5% vacancy on top of a 5% collection loss. He admitted that the average actual rental rates are $5.85, $6.72, and $7.62 for 1996, 1997, and 1998, respectively, which are higher than the rates used by Respondent.

17. Petitioners are requesting a 1998 actual value of $3,730,112.00, and a 1999 value of $4,640,722.00 for the subject property based on the income approach.

18. Respondent's witness, Mr. Tom Adams, a Certified General Appraiser for the Jefferson County Assessor's Office, presented the following indicators of value:

	Tax Year 1998	Tax Year 1999
Cost:	$6,696,890.00	$6,637,310.00
Income:	$4,797,100.00	$5,760,200.00

19. Respondent's witness used the income approach to derive a value for the subject property of $4,797,100.00 for tax year 1998, and $5,760,200.00 for tax year 1999.

20. Mr. Adams testified that they gather survey information from property owners, managers, and agents for income, expense and vacancy data. Pages 2 through 5 in his report are a summary of this information. This appeal involves two different base years: 1996 and 1998 levels of value.

21. Mr. Adams testified that he used rental rates of $5.25 per square foot for tax year 1998 and $7.00 per square foot for tax year 1999. He used a vacancy rate of 5% for both years. He also used 5% for a management expense, which is the same rate as that used by Petitioner. The expenses used were $0.79 per square foot for tax year 1998, and $1.05 per square foot for 1999. His capitalization rate for tax year 1998 was 10.8%, with the 1999 cap rate being 12%. His capitalization rates were determined using market information.

22. Mr. Adams testified that his income levels are below the subject property's actual performance.

23. Respondent's witness did not calculate a value based on the market approach for the subject property.

24. Respondent's witness presented 4 comparable sales for tax year 1998, ranging in sales price from $32.65 to $49.10 per square foot and in size from 10,387 to 130,002 square feet. No adjustments were made to the sales prices.

25. Respondent's witness presented 11 comparable sales for tax year 1999, ranging in sales price from $29.92 to $90.28 per square foot and in size from 3,600 to 95,413 square feet. No adjustments were made to the sales prices.

26. Mr. Adams testified that he reviewed the market sales. The subject property's assigned value for each base year falls within the indicated sales ranges.

27. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $6,696,890.00 for tax year 1998, and $6,637,310.00 for tax year 1999.

28. Mr. Adams testified that Page 8 of Petitioners' report is Jefferson County's land value information reported by zoning and location; this information is used only in the cost approach.

29. Mr. Adams testified that they used the cost approach, but relied on the income approach with support from the market approach.

30. Mr. Adams critiqued Petitioners' sales. He testified that some of the sales are located outside of Jefferson County: Comparables 2, 3, 6, & 7. His experience has been that the Aurora area experiences a lesser sales price per square foot; there is more space available and higher vacancies.

31. Mr. Adams also critiqued Petitioners' income approach. Petitioners' witness used the subject property's actual income from the actual rent rolls but then used a 10% vacancy rate, which was not the property's actual vacancy rate. Petitioner used maintenance, insurance, and leasing expenses that are actuals, but he used a 5% management expense when none was spent. He testified that he had no problem with a reserve deduction taken over a period of years, but pointed out that there is an entry for $15,000.00 expended for asphalt repaving; he believes that taking the expense and also using a reserve would result in a double expense. If the correct figures were used in Petitioners' income approach, it would result in a much higher figure than was assigned.

32. Under cross-examination, Mr. Adams testified that he had no problem with the DPT methodology regarding the calculation of replacement reserves. He acknowledged that the owner does manage the property himself.

33. Upon questioning from the Board, Mr. Adams testified that the tax load for the cap rates for both tax years 1998 and 1999 was 2.8%. Regarding the DPT course material, he does not think Assessor's are required to use it. He did not take out any reserves for replacement expense. He agreed that a 5% management expense was appropriate. He did not believe you should mix property actuals and market information in the income approach, particularly not actual income with market vacancy rates.

34. Under redirect, Mr. Adams reiterated that Petitioners' witness should not be mixing actuals and market rates. The $15,000.00 asphalt expense was in one year; there was no expense in either of the other 2 years. Page 11 of his report is by Fuller & Company, which shows vacancy rates of 4.78% and rents ranging from $4.25 to $9.50 per square foot. There are no 10% vacancies in the report.

35. Respondent assigned an actual value of $4,797,100.00 to the subject property for tax year 1998 and $5,760,200.00 for tax year 1999.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 1998 and 1999 valuations of the subject property were correct.

2. Petitioner raised the issue of whether the subject property was properly classified as industrial versus commercial property; however, there was a lack of evidence presented to the Board to determine whether the classification was incorrect. Respondent's witness testified that the property was classified according to its actual use, not zoning.

3. Petitioner did not calculate a cost approach, and Respondent's witness testified that he did not rely upon this approach. Therefore, the Board gave little weight to the cost approach.

4. Respondent did not calculate a value according to the market approach. Instead, Respondent chose to study a range of sales and concluded that the assigned value fell within those ranges. However, Respondent made no adjustments to those sales for differences in physical characteristics. Petitioner calculated a market approach, but also made no adjustments for physical characteristic differences. The Board believes that adjustments must be made for physical characteristic differences, and supporting documentation should be submitted for these adjustments. A market value conclusion based on unadjusted sales cannot be relied upon to give a truly accurate indication of value for the subject property. Therefore, the Board gave little weight to the market approach as submitted in this appeal by both parties.

5. The Board gave most weight to the income approach. The Board supports the use of actual income and expense information to establish a value for the subject property, but only when that information is shown to be equivalent to typical market data. The Board also believes that it is improper to calculate a value using a mixture of actual and market data; either all actual or all market data should be used.

6. The Board found Petitioners' income value calculation had some methodology and accuracy errors. The Board was persuaded by Respondent's witness that a vacancy deduction should not be taken when using actual income; the Board was convinced that the use of actual income would already account for any vacancy that occurred. Petitioners' deduction for income tax was incorrect, as the taxes were deducted in the wrong expense year and the 1996 paid taxes were not known. Regardless, when calculating a value for tax purposes according to the income approach, taxes should be included in the capitalization rate and not expensed. Petitioner also used a mix of actual and market data, which the Board has already found to be an inappropriate methodology. The Board also agrees with Respondent that the asphalt paving expense should not have been taken in addition to the reserve for replacement expense, as this would result in a duplicate expense deduction. The Board reviewed the list of replacement allowances submitted by Petitioner, but could not determine whether the expenses would be typical in the market, as there was no documentation submitted to establish typical replacement reserve allowances. Therefore, the Board could not rely upon Petitioners' income approach value conclusion.

7. Respondent's witness testified that he did not make a reserve for replacement expense deduction. However, Respondent's Exhibit 1 states that the expense allowance is calculated to include expenses such as replacement reserves.

8. Overall, the Board found both parties' exhibits to be confusing, fragmented, and lacking in some supporting documentation. However, after carefully reviewing all of the testimony and evidence presented by both parties, the Board was most persuaded by Respondent's income approach value.

9. The Board affirms the assigned values of $4,797,100.00 for tax year 1998 and $5,760,200.00 for tax year 1999.

ORDER:

The petition is denied.

APPEAL:

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

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 30th day of August, 2001.

BOARD OF ASSESSMENT APPEALS

Mark R. Linné

Claudia D. Klein

Karen E. Hart

This decision was put on the record

AUG 30 2001

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

Diane Von Dollen

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STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS