

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICCARDO PACINI,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Riccardo Pacini Address: 17424 West 17th Place Golden, Colorado 80401 Phone Number: (303) 278-3541 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 39759</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 27, 2002, Judge Nuechter and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Martin E. McKinney, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**BLK 1 LOT 2 KEY C – NORWOOD SUBDIVISION
(Jefferson County Schedule No. 110098)**

Petitioner is protesting the 2001 actual value of the subject property, a multi-tenant retail shopping center built in 1985, with an improvement size of 14,128 square feet on a lot consisting of 51,471 square feet. The site was formerly the location of a Conoco gas station.

ISSUES:

Petitioner:

Petitioner contends that the subject property was previously the location of a gas station, and the subject land is contaminated. He did not know the degree of contamination when he purchased the property. Respondent has failed to make adjustments for the contamination issue.

Respondent:

Respondent contends that the contamination issue is too speculative to determine what adjustment, if any, is appropriate. The income and vacancy rates for the subject property have not been affected by this issue.

FINDINGS OF FACT:

1. Petitioner, Mr. Riccardo Pacini, testified that Respondent did not take into account the environmental condition of the property, which strongly affects the property value. To remove the contaminated soils, the government requires you remove the old soil and put it in a special containment area. He thinks it would cost \$200,000.00 to \$300,000.00 to cure the contamination problem. He would need to reveal the contamination issue to any potential purchaser.

2. Mr. Pacini testified that the subject property is periodically tested through monitoring well samplings. He has assisted with the sample taking. The sampled water smells like gasoline and ignited when he set a match to it.

3. In cross-examination, Mr. Pacini admitted that he has not given the Respondent a written cost to cure the contamination, but has given the Respondent copies of the contamination lawsuit between Conoco and the subject property's previous owner. The previous owner received a settlement from Conoco, who is responsible for the cleaning and monitoring of the subject site. However, he does not believe he would be compensated for a loss of rent or tenants during the cleanup. He received an assignment to the lawsuit settlement agreement from Conoco. He was a tenant prior to purchasing the subject property, but did not know that he needed to get a Phase I Environmental study; the contamination problem is greater than he anticipated at the time of purchase. He admitted that the property is functional, but the environmental condition affects the value of the property.

4. Upon questioning from the Board, Mr. Pacini testified that his requested value is based on the Respondent's value less his estimated cost to cure the property contamination. He believes an investor would discount the market value of the property due to the need to get a better investment return.

5. In recross-examination, Mr. Pacini admitted that he has not been told that the contamination problem must be cured in the near future.

6. Petitioner is requesting a 2001 actual value of \$400,000.00 to \$600,000.00 for the subject property.

7. Respondent's witness, Mr. William B. Stuhlman, a Certified General Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	\$ 850,000.00 to \$920,000.00
Cost:	\$1,104,760.00
Income:	\$ 807,300.00

8. Mr. Stuhlman testified that the subject property is located at 20th and Wadsworth in the City of Lakewood. The property is a retail center that was built in 1985. The property owner occupies a portion of the subject property, and the balance of the property is occupied by seven tenants. There used to be a Conoco gas station on the site, but it was demolished and the retail center was subsequently built on the site.

9. Based on the market approach, Respondent's witness presented an indicated value of \$850,000.00 to \$920,000.00 for the subject property.

10. Respondent's witness presented a list of 32 commercial sales that occurred within the subject property neighborhood during the appropriate base year. The sales ranged in sales price from \$23.46 to \$239.03 per square foot and in size from 1,432 to 67,599 square feet. No adjustments were made to the sales for differences in physical characteristics.

11. Mr. Stuhlman testified that the average of the sales prices was \$81.32 per square foot. His concluded value for the subject property is \$60.00 to \$65.00 per square foot, well below the unadjusted sales prices.

12. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$1,104,760.00.

13. Mr. Stuhlman testified that the subject property land size is 51,471 square feet. He used a land value at \$10.75 per square foot, based on the Jefferson County Assessor's assigned land value for all similar commercial properties located within the subject property's neighborhood. The improvements were valued using the Cole-Layer-Trumble replacement cost system. The improvements are 14,128 square feet in size and were valued at a total replacement cost new plus depreciation of \$551,450.00, which included concrete, asphalt, and canopy costs.

14. Respondent's witness used the income approach to derive a value of \$807,300.00 for the subject property.

15. Mr. Stuhlman testified that the subject property is valued based on a classification of Income Models 4 & 5, which is the classification used for the majority of strip shopping centers in Jefferson County. Based on this classification, he used a market rent of \$10.00 per square foot, a vacancy rate of 10%, expenses of \$3.00 per square foot, and a capitalization rate of 10.50%. Mr. Stuhlman pointed out that, according to the subject property actual 1998 rent rolls, the average rental rate was \$11.07 per square foot, higher than the market rental rate he applied. He applied 20% of the total income approach value to the land.

16. Respondent concluded to a value of \$807,300.00 based on the income approach.

17. Mr. Stuhlman testified that he had not received any documentation on the contamination issue. He believes that some of the building would have to be removed to do the cleanup. The contamination has not affected the vacancy rate or the market value of the property. He would need to look at the actual cure costs spent by the Petitioner once cleanup occurred before he would make an adjustment. The contamination issue is too speculative to make an adjustment at this time.

18. Upon questioning by the Board, Mr. Stuhlman testified that he disputed whether contamination actually existed on the subject property as he had not received any documentation related to the contamination issue, and there were no monitoring wells. Upon further questioning by the Board, Mr. Stuhlman admitted that he had seen documentation relating to the contamination issue, though not recently. He had no subsequent information to show that the contamination problem had been cured.

19. Respondent assigned an actual value of \$807,300.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board did not find Mr. Stuhlman credible in regards to the contamination issue. His testimony was conflicting, alternately testifying that he did/did not know of the contamination at the subject site. The Board is convinced that the subject property suffers from contamination.

3. The Board is disturbed that Respondent did not attempt to arrive at a value for the subject property individually, but relied on mass appraisal valuation to justify the assigned value. Respondent's Exhibit 1 is purported to be a limited scope appraisal, but the Board notes that Page 6 of Respondent's Exhibit 1 states that "This report is not intended to be an appraisal but rather a review of values assigned and a summary of facts relied upon to determine the previous values." Valuing the subject property by making a comparison of all "similar" shopping center properties in the subject's neighborhood without regard to what differences in characteristics there may be is not good appraisal practice. In addition, the Board cannot be certain that any of these properties used to value the subject property have contaminated soils similar to the subject.

4. The Board recognizes that Conoco and not Mr. Pacini is responsible for the cleanup costs, but also was persuaded by Mr. Pacini that he may not be compensated for any loss in rent or tenants. In addition, Mr. Stuhlman testified that he believed a portion of the subject property building would need to be removed in order to accomplish the cleanup. The Board agrees with Mr. Pacini that he would be required to reveal these potential issues to any future purchaser. The Board does not believe that a future purchaser would view the subject property in the same light as a similar property that does not have a possible contaminated soil cleanup issue.

5. However, the Board finds it difficult to use Mr. Pacini's requested value reduction, as there is no supporting documentation for his request. Typically, this Board reduces property values for contamination issues using a percentage reduction, an accepted appraisal practice. The Board has determined that the subject property value should be reduced by 20% to account for the contamination issue.

6. After careful consideration of all the evidence and testimony presented, the Board concluded that the 2001 actual value of the subject property should be reduced to \$645,840.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$645,840.00.

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

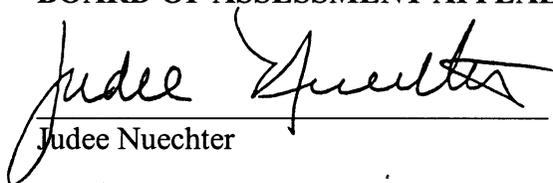
APPEAL:

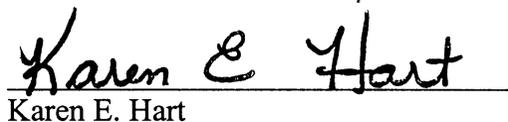
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 8th day of May, 2002.

BOARD OF ASSESSMENT APPEALS


Judee Nuechter


Karen E. Hart

This decision was put on the record

MAY 07 2002

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


Diane Von Dollen

