BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **FRED SPALLONE INC.,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	
Attorney or Party Without Attorney for the Petitioner: Name: William A. McLain, Esq. Address: 3962 Olive Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0387 Attorney Reg. No.: 6941	**Docket Number: 40148**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on May 23, 2003, Karen E. Hart and Rebecca A. Hawkins presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Lily W. Oeffler Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

5800 West 38th Avenue, Wheat Ridge, Colorado
(Jefferson County Schedule No. 022699)

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1999 and 2000. The subject property consists of a two-story brick and block commercial building built in 1957. The building contains 18,879 gross square feet with 16,140 square feet of rentable area. The rectangular site has a corner location with 39,288 square feet, and a land to building ratio of 2:1. The building has retail on the first floor and office use on the second floor.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued due to the below-average quality of construction and no remodeling since the date of construction. Actual income and expenses should be used due to the condition and lack of maintenance of the subject. The market approach does not apply due to the lack of similar sales.

Respondent:

Respondent contends that the subject property has been properly valued. It is an older
Class C building without any improvements. Other than posting a sign on the building exterior, the owners are not making any efforts to lease the vacant space. They have valued the subject property using models, which are more appropriate.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Ronald C. Sandstrom of F & S Tax Consultants, presented the following indicators of value:

Market:	N/A
Cost:	$312,000.00
Income:	$278,300.00

2. Mr. Sandstrom did not present a market approach to value due to the lack of similar sales in the area that did not require large adjustments. However, he testified to finding two strip center comparables with first floor retail and second floor office space. One sale was similar in location, only half the size of the subject property, but fully occupied. The other sale was in Arvada, newer than the subject, superior in quality of construction, and would have required a large adjustment for the difference in the land to building ratio.

3. Mr. Sandstrom presented a cost approach to derive a market-adjusted cost value for the subject property of $312,000.00.

4. Mr. Sandstrom testified that he reviewed 23 vacant land sales in Jefferson County and determined that three were similar in location. The three vacant land sales ranged in price from

$3.21 to $2.87 per square foot. Mr. Sandstrom stated that the median selling price of all sales was $2.87 per square foot and the average was $2.88 per square foot. He calculated the land value for the subject at $2.85 per square foot for a total land value of $111,970.00.

5. Mr. Sandstrom testified to inspecting the subject building numerous times over the last few years. The subject is a Class C, average to low cost masonry building. Examples of the inexpensive construction throughout the building include through the wall air conditioning units, pressed board ceiling tiles, and cheap exterior brick.

6. Mr. Sandstrom described a lack of maintenance with specific examples such as sagging ceiling tiles, leaking ceilings, and peeling wall coverings. The building had not been remodeled since original construction. He rated the asphalt parking lot as 50% good as a portion was replaced by the city. He testified the second floor is not handicap accessible.

7. Mr. Sandstrom testified to using replacement costs of $41.62 per square foot for the retail space and $50.77 for the office space. Physical depreciation was figured at 80% for the building improvements and 50% for the yard improvements. Depreciation estimates are due to condition and lack of maintenance.

8. Mr. Sandstrom presented an income approach to derive a value of $278,300.00 for the subject property.

9. Mr. Sandstrom testified that the first floor is used for retail and that the second floor is used for office space. Offices range in size from 228 to 480 square feet and have not been remodeled since construction in 1957. He reviewed leased space within the building and gross rents ranged from $3.97 to $8.00 per square foot. For the purpose of his valuation, Mr. Sandstrom assigned rental rates of $5.07 per square foot for the retail space and $4.96 per square foot for the office space. The current vacancy rate of the subject is 44% for the second floor office space and 7% for the first floor retail space. He used an 11% capitalization rate.

10. Mr. Sandstrom testified that numerous units in the subject building have been vacant for many years; office space #12 for approximately eight years, office space #14 for at least 12 years, retail units #5804 and #5850 have changed hands many times. Retail space #5800 has had the same tenant for 12 years. Retail space #5808 has changed hands but has remained a liquor store. The owner's method of advertising vacant space is placing a sign on the exterior of the building, which has been visible for many years.

11. Mr. Sandstrom testified that the owner, Mr. Fred Spallone, owns a number of properties throughout the metro area. The accounting format used by Mr. Spallone allocates expenses to each property based on square footage. Mr. Sandstrom reviewed the expenses and amounts allocated to the subject property. Mr. Sandstrom used a two-year average of expenses incurred from 1997 and 1998. He made no distinction of expenses between the first and second floors. He reconciled at $1.97 per square foot for expenses.

12. Mr. Sandstrom testified that a potential buyer would look at current rents and potential rents. A buyer would consider what improvements were needed and how much they would cost in order to secure higher rents.

13. Under cross-examination, Mr. Sandstrom admitted that he had not seen any newspaper advertising for the vacant space. The owners use only the exterior building sign to advertise vacant space. The indicated value of $290,000.00 equals $15.36 per square foot and $9.43 per square foot without the land.

14. During re-direct, Mr. Sandstrom explained that the actual expenses he used were $1.97 per square foot. The Jefferson County Assessor used an expense rate of $2.50 per square foot for the retail area. The capitalization rate used by Mr. Sandstrom was 11%, whereas the assessor used 12%.

15. The Board questioned Mr. Sandstrom regarding vacancy rates. Mr. Sandstrom testified that the vacancy rate varied, but that he had used a specific point in time to arrive at 7% for the retail space and 44% for the office space. The Board requested clarification on the summary of expense figures used on page 16 of Petitioner's Exhibit A.

16. Petitioner is requesting a 1999/2000 actual value of $290,000.00 for the subject property.

17. Respondent's witness, Mr. William Stuhlman, a certified general appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	$570,000.00 to $620,000.00
Cost:	$639,870.00
Income:	$510,000.00

18. Based on the market approach, Respondent's witness presented an indicated value range of $570,000.00 to $620,000.00 for the subject property.

19. Respondent's witness presented three comparable sales ranging in sales price from $285,000.00 to $650,000.00, or $33.44 to $39.92 per square foot; and in size from 7,246 to 16,281 square feet. After adjustments for location, size and vacancy, sales ranged from $228,000.00 to $552,400.00, or $28.42 to $33.93 per square foot.

20. Mr. Stuhlman testified to using mixed-use retail and office properties in his report. Sale #1 is similar to the subject in age and tenant mix, it is located on a corner, has the same small local business location and a brick exterior, but is smaller in size. Mr. Stuhlman made downward adjustments for location and age, but feels sale #1 is most similar to the subject property. Sale #2 was a newer building with a similar retail/office mix. It is frame and brick construction, but is a newer building. Sale #2 is larger in size with a higher land to building ratio. The vacancy rate was 20%, mostly in the second floor offices. Sale #3 has retail on the first floor with a walkout basement that contains the office space. It is similar in tenant mix, size and land to building ratio.

21. Mr. Stuhlman testified to looking at the price per square foot for older office buildings as a check of reasonableness and found that these sales averaged $34.44 per square foot. Sale #2 sold in 1993 and again in 1997 for a higher price. He testified the subsequent sale shows a demand for properties of this type in the marketplace.

22. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $639,870.00.

23. Mr. Stuhlman testified that the subject property is classified as a retail strip center, in fair to average condition. He last inspected the property in December 1998.

24. Mr. Stuhlman testified that he determined the land value for the subject from other sales of vacant land located on secondary arterials. He used 23 land sales, the average price per square foot was $2.88 and the median price per square foot was $2.87. Mr. Stuhlman reconciled at $2.85 per square foot. This indicates a land value for the subject of $111,970.00.

25. Mr. Stuhlman testified to using the computerized Cole-Layer-Trumble (C.T.L.) system for replacement costs. He used replacement costs of $41.54 per square foot for the first floor retail space and $58.27 per square foot for the second floor office space. He rated the subject as 50% good. Mr. Stuhlman believes that anything below 35% good is salvage or not habitable. The subject property still functions as a retail and office building with deferred maintenance; he feels that these numbers are conservative. He derived a replacement cost of $527,900.00 without land, and $639,870.00 including land.

26. Mr. Stuhlman used the income approach to derive a value of $510,000.00 for the subject property.

27. Mr. Stuhlman testified that he completed a rental survey and data was divided into three
classifications: $7.25 per square foot for older properties with secondary locations, $9.25 per square foot for most of the strip centers in the county, and $11.00 per square foot for newer properties with good locations. Mr. Stuhlman reconciled at $7.25 per square foot for the first floor retail space and $10.00 per square foot for the second floor office space.

28. Mr. Stuhlman testified that typically, strip retail space is leased on a gross basis. He divided expenses into three models that ranged from $2.50 to $3.50 per square foot and reconciled at $2.50 per square foot for the subject property expenses. Mr. Stuhlman used an occupancy rate of 90% that is supported by strip retail shopping center information. This information shows a stabilized occupancy between 80% and 100% and a 25% vacancy rate for the office space. He used an overall capitalization rate of 12% indicating a value for the subject of $510,000.00.

29. Mr. Stuhlman testified to giving the greatest weight to the income approach. He feels an investor would make a purchase decision based on the income stream generated. The cost approach and the sales approach set the upper end of the value range. Mr. Stuhlman concluded to a value of $550,000.00 for the subject property.

30. Respondent assigned an actual value of $511,630.00 to the subject property for tax years 1999 and 2000.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuation of the subject property was incorrect for tax years 1999 and 2000.

2. The Board carefully considered all admitted evidence and testimony and reviewed both Petitioner's and Respondent's appraisals. The Board weighed the importance of physical and locational characteristics addressed by each appraiser. The location, age and condition of the subject property contribute to a weak market approach to value. The cost approach is not reasonable to consider due to the age and deferred maintenance of the subject. The Board feels that the most credible information relates to the income approach.

3. The Board notes that Petitioner's appraisal used actual rents, expenses and vacancy rates, but could give little weight to Petitioner's income approach. The Petitioner needed to show market derived rents and expenses in order to use actual figures for the subject. The Board was not convinced that the subject property is renting at market rates or has market vacancy rates. The Board questions why the vacancy rate is so high for the second floor office space while the first floor retail space is almost full.

4. The Board finds that the Respondent's income approach is more credible, but believes the projected rents do not adequately reflect the condition. The Board calculated the Net Operating Income by slightly lowering the rents and increasing expenses. The Board was convinced that the 12% capitalization rate used by the Respondent is appropriate. The Board re-evaluated these figures to indicate a value of $382,000.00.

5. The Board concluded that the 1999 and 2000 actual value of the subject property should be reduced to $382,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on an actual value for the subject property of $382,000.00 for tax years 1999 and 2000.

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.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

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 recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 1st day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Rebecca Hawkins

Rebecca A. Hawkins

This decision was put on the record

JUL 0 1 2003

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

Penny S. Lowenthal

Penny S. Lowenthal

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

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