

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FRED SPALLONE, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Ronald C. Sandstrom F & S Tax Consultants</p> <p>Address: 11540 W. 69th Way Arvada, Colorado 80004</p> <p>Phone Number: (303) 424-0683</p>	<p>Docket Number: 41214</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 21, 2003, Karen E. Hart and Rebecca Hawkins presiding. Petitioner was represented by Mr. Ronald Sandstrom with F & S Tax Consultants. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**319 South Sheridan Boulevard, Lakewood, Colorado
(Jefferson County Schedule Nos. 110322 and 110345)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2000. The subject property consists of a 696 square foot vacant commercial building on a 20,656 square foot corner site. The property was used as a gas station until January 1999.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued. Due to the poor condition of the property, Petitioner believes that the highest and best use of the subject property would be vacant land.

Respondent:

Respondent contends that the subject property is correctly valued using the market and cost approaches.

FINDINGS OF FACT:

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

Market:	\$ 87,000.00
Cost:	\$120,800.00
Income:	\$ 96,000.00

2. Mr. Sandstrom testified that the subject was used as a service station/convenience store until June 30, 1998. The gas pumps were pulled and the station was vacated on January 1, 2000. The subject has excess land that was used as a parking lot. The overall condition of the improvement is fair to poor. There are holes in the walls and broken ceramic tiles on the floor and walls. He rated the property as 20% good to reflect the lack of maintenance and condition of the subject. Mr. Sandstrom believes the highest and best use of the subject is vacant land.

3. Mr. Sandstrom presented three comparable sales ranging in sales price from \$200,000.00 to \$260,000.00 and in size from 1,087 to 1,812 square feet. After adjustments were made, the sales ranged from \$140,000.00 to \$234,000.00 or \$125.05 to \$129.14 per square foot.

4. Mr. Sandstrom testified that all three comparable sales were operated as gas stations. Sale #1 is located on Wadsworth Boulevard, has a 10:1 land-to-building ratio and required adjustments for location and age. Sale #2, located on the Wadsworth Bypass (even though it has a Grandview address), is a newer building in average condition, has a 12:1 land-to-building ratio, and required adjustments for location, size and age. Sale #3 is much larger than the subject, and required adjustments for location and for excess land. He looked at Respondent's sale #4 but chose not to use it because it was a pad site and included a car wash and convenience store.

5. Mr. Sandstrom testified that the average sales price for the three comparables is \$127.66 per square foot, with a median of \$128.79 per square foot. He believes comparable sale #3 is closest to the subject in age and was built as a Vickers facility, as was the subject property.

6. In cross-examination, Mr. Sandstrom explained that Respondent's sale #4 is similar to the subject in land-to-building ratio at 30:1. The subject has a 22:1 land-to-building ratio. However, the Respondent did not use the original selling price in his report; he used an adjusted sale price divided by the square footage.

7. Petitioner's witness used Marshall and Swift, a state approved cost estimating service, to derive a market-adjusted cost value for the subject property of \$120,800.00. Mr. Sandstrom agreed with Respondent's land value of \$5.25 per square foot to value the subject site. He rated the improvement in poor to fair condition, and felt it necessary to add a separate line item adjustment of 10% to reflect condition. He used a 40-year life, an effective age of 35 years and depreciation at 70%. He depreciated the asphalt at 80% and the concrete at 90%.

8. Petitioner's witness presented an income approach to derive a value of \$96,000.00 for the subject property.

9. Mr. Sandstrom testified that the subject property was under a 30-year triple net lease for \$800.00 per month or \$13.79 per square foot for tax year 1999. The tenant was responsible for all expenses. For tax year 2000, the property was vacant. Mr. Sandstrom testified that other converted gas service stations were reviewed, and he presented three rental rates ranging from \$6.20 to \$9.41 per square foot. However, he based the income approach on the actual rent generated for the subject property during 1999. Mr. Sandstrom calculated a gross actual annual rent of \$9,600.00, used a 5% vacancy rate and a 10% capitalization rate, resulting in an indicated value by the income approach of \$96,000.00. No expenses were used in calculating the value based on the income approach.

10. Under cross-examination, Mr. Sandstrom explained that the 15-year lease on the property was originally five years, with two five-year renewal options. The third option ended in 1994. There were no written documents for the terms, and no additional addendum to the original lease. He explained that the owner, Mr. Spallone, operated without a written lease during the base period. Both schedule numbers (110322 and 110345) were under the lease.

11. Upon questioning from the Board, Mr. Sandstrom explained that with each five-year lease option, the rent increased \$50.00 per month. The lease covers the entire property, there would be no additional value for the excess land. Petitioner's witness performed an interior inspection of the subject property in 2000. The large holes in the interior walls were due to the removal of equipment. Mr. Sandstrom explained that he did not use sale #4 shown in Respondent's Exhibit #1 because it is superior to the subject, is a pad site with a land value of \$12.00 per square foot, has a car wash and more neighborhood shopping, and he felt that too many adjustments would be necessary. Mr. Sandstrom explained that the photographs in his report were taken in 2001 or 2002.

12. Petitioner is requesting a 2000 actual value of \$108,440.00 for the subject property.

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

Market:	\$140,000.00 to \$160,000.00
Cost:	\$149,000.00
Income:	N/A

14. Based on the market approach, Respondent's witness presented an indicated value range of \$140,000.00 to \$160,000.00 for the subject property.

15. Respondent's witness presented four comparable sales ranging in sales price from \$200,000.00 to \$375,000.00, and in size from 1,075 to 1,812 square feet. After adjustments were made, the sales ranged from \$209,998.00 to \$431,258.00 or \$184.34 to \$401.17 per square foot.

16. Mr. Stuhlman testified that the subject property consists of two parcels. Schedule No. 110322 is 13,736 square feet and Schedule No. 110345 is 6,920 square feet in land size. The total land size is 20,656 square feet. The site is located on the southwest corner of West Alameda Avenue and South Sheridan Boulevard. This is a busy intersection and the site can be accessed from either street. The existing improvement was built in 1970 and was used as a gas station and small convenience store. Mr. Stuhlman testified that he did not gain access to the interior of the improvement, and relied on photos kept in the file plus an outside appraisal. His photos were taken in 1997. He rated the quality and condition of the subject property as average.

17. Mr. Stuhlman testified that the comparable sales are all gas stations and were the most comparable to the subject property. All of the comparable sales used had good locations, similar accessibility and traffic. Sale #1 was a Conoco Food Store with four gas pumps. It had a corner location and the buyer was leasing the property prior to the sale. Comparable sale #2 was an Amoco station with a corner location that sold while it was vacant. Sale #3 was a Total station with contamination and flood plain issues. It did not have a corner location, but had excess land resulting in a high land-to-building ratio. Sale #4 was a Conoco station, newer in age but somewhat similar in improvement size. He testified that most properties of this type in Jefferson County are owner occupied and rarely leased.

18. Respondent's witness used Cole-Layer-Trumble, a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$149,000.00. Mr. Stuhlman testified that, in order to value the land, he looked at comparable sales with good, but not primary, locations.

19. Mr. Stuhlman considers the subject to have a secondary, non-destination location. He used 25 sales within Jefferson County, ranging from \$3.92 to \$7.83 per square foot. The average price per square foot was \$5.31 and the median was \$5.36 per square foot. He assigned a land value of \$5.25 per square foot for the subject property. The subject consists of two parcels of land; one is vacant and to the south of the improvement; the second parcel contains the improvement. Mr. Stuhlman valued the subject site of 20,656 square feet at \$5.25 per square foot for a total land value

of \$108,440.00.

20. Mr. Stuhlman rated the improvement average in quality and condition, with a 40-year life, an effective age of 20 years, and depreciation at 50%. Mr. Stuhlman testified that Petitioner's separate line item adjustment of 10% for poor condition indicates the subject only has salvage value. He believes the condition of the subject property on June 30, 1998 was better than Petitioner's opinion of fair to poor.

21. Respondent's witness did not present an income approach to value.

22. Mr. Stuhlman concluded to a value of \$150,000.00 for the subject property, with primary weight given to the cost approach.

23. Upon questioning from the Board, Mr. Stuhlman addressed canopies on the comparable sales. Sale #1 did not have a canopy, sale #2 had a canopy, and sale #3 had a canopy. The subject property does not have a canopy. He testified that the market may recognize a value difference between improvements with and without a canopy; however, this may be getting into business value.

24. Respondent recommended that the assigned value of \$154,990.00 for the subject property be reduced to \$150,000.00 for tax year 2000.

CONCLUSIONS:

1. Petitioner's witness presented sufficient probative evidence and testimony to prove that the tax year 2000 valuation of the subject property was incorrect.

2. The Board reviewed evidence and testimony concerning the condition of the subject property. The Board gave most weight to Mr. Sandstrom's testimony regarding condition as of June 30, 1998. The Board was convinced that the building was not a big contributor to value due to its condition.

3. The Board was not convinced that an extra line item adjustment of 10% for condition was appropriate. Typical appraisal practice dictates all physical depreciation should be handled in the depreciation section.

4. The Board agrees with Petitioner that Respondent's sale #4 is not similar to the subject property and should not be considered. Including sale #4 skewed the average adjusted price per square foot to \$202.00. Without Sale #4, the average price per square foot would be \$153.05.

5. The Board did not give Petitioner's income approach any weight as actual rent could not be used without market support.

6. After careful consideration of all of the testimony and evidence presented, the Board adjusted the subject property for condition, canopies and excess land, giving most weight to comparable Sale #2 as it is most similar to the subject property.

7. The Board concluded that the 2000 actual value of the subject property should be reduced to \$140,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2000 actual value for the subject property of \$140,000.00.

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.

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 27th day of September, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Rebecca Hawkins

Rebecca A. Hawkins

This decision was put on the record

SEP 11 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

