

<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>FRED SPALLONE INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 E-mail: wamclain@aol.com Attorney Reg. No.: 6941</p>	<p><b>Docket Number: 41215</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 10, 2003, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Lily W. Oeffler, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**319 S. 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 years 2001 and 2002. The subject property consists of a 696 square foot vacant commercial building on a 20,656 square foot corner site. The property was previously used as a convenience store/gas station.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject property was once a convenience store/gas station, but that the gas pumps have been removed and the store is boarded up. The subject property should be valued as vacant land and the building should be classified as a minor structure. It does not add value to the land. The improvement is a burden to the property.

### **Respondent:**

Respondent contends that the subject property must be valued as is with the current use. The building is not a minor structure as described in the Department of Property Taxation (DPT) guidelines; it has restrooms and an HVAC system.

## **FINDINGS OF FACT:**

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

Market:	\$118,772.00
Cost:	\$129,300.00
Income:	\$ 96,000.00

2. Mr. Sandstrom testified that the subject property is located at 319 South Sheridan Boulevard, Lakewood, Colorado. The subject property consists of two parcels with a total land area of 20,656 square feet. The building was constructed in 1969, is 696 square feet in size, and is in poor condition. The gas tanks and pumps were removed prior to September or October of 1999. He inspected the interior of the building in 2002; it was in poor condition at the time of inspection and could not be used without substantial repairs. The asphalt had weeds growing through it and the concrete was cracked.

3. Based on the market approach, Petitioner's witness presented an indicated value of \$118,800.00 for the subject property, as vacant land.

4. Petitioner's witness testified that he examined the sales of 21 improved, single tenant retail sites, ranging in sales prices from \$36.35 to \$230.63 per square foot, with an average of \$88.21 per square foot. All of the buildings were twice the size or larger than the subject, with one

exception. He did not review sales of convenience stores with gasoline pumps as the gas tanks and pumps have been removed from the subject. The highest value of the subject is as vacant land.

5. Petitioner's witness presented six comparable sales of vacant land ranging in sales price from \$110,000.00 to \$844,400.00 or \$4.50 to \$7.12 per square foot and in size from .43 acres to 4.07 acres. No adjustments were made to the sales.

6. Mr. Sandstrom testified that the sales were located throughout Jefferson County. The median sales price is \$5.74 per square foot and the average selling price is \$5.66 per square foot. The subject property is less than a half-acre in size. Comparable sale #4 is most similar to the subject in both size and location. He used a rounded median sales price at \$5.75 per square foot for a total land value of \$118,772.00.

7. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$129,300.00.

8. Mr. Sandstrom testified that he used Marshall & Swift Cost Service to value the property as a Class C convenience store, applying a 60% depreciation factor and an additional 20% functional depreciation. He determined a total property value of \$129,273.00, rounded to \$129,300.00.

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

10. Mr. Sandstrom testified that the property was under a lease for \$800.00 per month or \$13.79 per square foot, though it was vacant. He reviewed typical retail store rents; the subject property pumps were removed and he felt Total Petroleum had quit using the property because it did not meet their needs. The retail rental and expense income approach derived a lesser value than the actual income pro forma. He used the actual lease rate at \$9,600.00 gross rent income, less a 5% vacancy, no expenses to the landlord, and a 10% capitalization rate to determine a value of \$96,000.00, which is less than the vacant land value of \$118,772.00. This is another indication that the structure does not add to the value of the land. Though he calculated an income approach, it was not considered in his value reconciliation.

11. Mr. Sandstrom concluded to a value of \$118,800.00, based on the market approach for vacant land.

12. Under cross-examination, Mr. Sandstrom testified that he believes the DPT definition of minor structure is for any building that adds no value to the land. The subject improvement adds no value to the land and would require a substantial investment to be useable. He does not have pictures of the interior of the subject building. He did not look at gas station sales. There is no written lease after 1994. He confirmed the rental amount with the owner's receipts.

13. On redirect, Mr. Sandstrom testified that he is familiar with Respondent's convenience store sale #1, it was vacant for a short period of time but the tanks were not removed. The building is much larger than the subject, as are the buildings on Respondent's remaining two comparable sale properties. The comparable sales have much smaller land-to-building ratios as well.

14. Petitioner is requesting a 2001 and 2002 actual value of \$118,800.00 for the subject property.

15. 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:	\$170,000.00 to 190,000.00
Cost:	\$157,600.00
Income:	Not Applicable

16. Mr. Stuhlman testified that the subject property is located at the southwest corner of South Sheridan Boulevard and Alameda. The pumps and tanks were removed in January of 1999 and the tenant, Total, vacated the property in November of 1999. Jefferson County values all convenience stores based on the cost approach. There is little rental information, and many sales include business and personal property components. He has not inspected the interior of the subject property. He does not believe that being vacant is a factor on the value of buildings.

17. Based on the market approach, Respondent's witness presented an indicated value range of \$170,000.00 to \$190,000.00 for the subject property.

18. Respondent's witness presented three comparable sales ranging in sales price from \$395,000.00 to \$450,000.00 or \$205.73 to \$376.25 per square foot, and in size from 1,196 to 1,920 square feet. After adjustments were made, the sales ranged from \$257.16 to \$451.50 per square foot.

19. Mr. Stuhlman testified that he used convenience store sales. Sale #1 included an additional parcel. Sales #2 and #3 were part of a bulk sale. Sale #3 had a canopy added after the sale date. He adjusted the sales for location and size.

20. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$157,600.00.

21. Mr. Stuhlman testified that Petitioner used the same land sales. Mr. Stuhlman concluded to a land value of \$5.90 per square foot for the subject property, or \$121,870.00. They use the Cole-Layer-Trumble (CLT) system for the building cost calculation. He valued the improvements at \$89,234.00 replacement cost new. The building is classified as being in fair condition. He determined a 60% depreciation factor and arrived at a replacement cost new less depreciation value of \$35,694.00.

22. Respondent's witness did not calculate an income approach due a lack of data, as most of these types of properties are owner-occupied.

23. Mr. Stuhlman testified that single tenant retail properties are different property types than convenience sales. Retail properties tend to be larger in size. None of Mr. Sandstrom's retail properties were convenience stores. He disagrees that the building should be classified as a minor structure. It has heating and plumbing; it is not a shed. There is some value to the structure. The property was offered for lease during the base period. A building being vacant does not mean there is functional obsolescence. There has been no zoning change that would prohibit its use as a convenience store. He differs from Petitioner in the depreciation factor of the paving as well. His land value alone is larger than Petitioner's requested value.

24. Under cross-examination, Mr. Stuhlman testified that his sale on 64<sup>th</sup> and Quaker was purchased for a convenience store. Usually, Wadsworth is considered a superior location. The Wadsworth sale is much larger than the subject. All of his improved sales were operating at the time of sale. Sales #2 and #3 were allocated sales prices as verified by the purchasers. Pumps and tanks need to be installed for the subject property to be utilized as a convenience store/gas station. He does not know how much reconstruction would be required to use the building. He based his use on the zoning allowance as a convenience store. The single tenant retail sales surveyed by Petitioner came from assessor sales as shown on the last two pages of Respondent's Exhibit 3.

25. Respondent assigned an actual value of \$174,060.00 to the subject property for tax years 2001 and 2002, but is recommending a reduction to \$160,000.00.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the valuations of the subject property for tax years 2001 and 2002 were incorrect.

2. Neither party gave consideration to the income approach due to a lack of good comparable income approach data.

3. Petitioner did not conclude to a market value as improved for the subject property. Respondent's sales #2 and #3 were allocations from a larger bulk property sale. The Board determined that the improved sales that were presented were weak and should be given little consideration in the final value conclusion of the subject property.

4. The remaining value approach is the cost approach.

5. Regarding the land value, Respondent presented a list of unadjusted sales prices and did not correlate to any specific sales, choosing to rely on the mass appraisal value of \$5.90 per square foot. This Board is most interested in site-specific information. Petitioner's witness also presented a list of unadjusted sales prices, though he correlated to two specific sales that he felt most closely resembled the subject property. Therefore, the Board gave more weight to Petitioner's land

value of \$5.75 per square foot, or \$118,772.00.

6. Regarding the improvement value, the Board recognizes that the subject building is vacant, small in size, and in poor condition. However, the Board was convinced that the subject property building does have some value; Petitioner's own cost approach gives some contributing value to the improvements. Respondent's improvement calculation is based on the subject property condition as fair. The Board believes Petitioner's determination of poor condition is more accurate, considering the condition of both the building and the land improvements of asphalt and concrete paving. The Board was not convinced that Petitioner's additional 20% functional depreciation for the building was supported; however, the Board does accept Petitioner's depreciated value of the yard improvements. The Board recalculated Petitioner's cost approach to an indicated value of \$150,138.00.

7. The Board concluded that the 2001 and 2002 actual value of the subject property should be reduced to \$150,138.00, with \$118,772.00 allocated to land and \$31,366.00 allocated to improvements.

### **ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on 2001 and 2002 actual values for the subject property of \$150,138.00.

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.

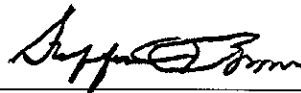
In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

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 17<sup>th</sup> day of September, 2003.

**BOARD OF ASSESSMENT APPEALS**



Steffen A. Brown



Karen E. Hart

This decision was put on the record

SEP 16 2003

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



Penny S. Lowenthal

