

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MICROSEMI CORP.,</p> <p>v.</p> <p>Respondent:</p> <p>BROOMFIELD COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 51555</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 25, 2009, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Tami Yellico, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2006.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**800 Hoyt Street, Broomfield, Colorado 80020
(Broomfield County Schedule No. R1067574)**

The subject property is a 112,128 square foot manufacturing facility on a 14.39 acre site. The building was completed in 1975, with additions to the building in the 1980s. The property was occupied as of the date of value.

The Board issued an order on December 31, 2007 reducing the 2005 actual value of the subject property to \$2,803,352.00. The concluded value was calculated to include 70% of the 2005 remediation cost of \$255,146.00 (or \$178,602.00) as an expense deduction. The Board's decision was affirmed by the Colorado Court of Appeals.

Petitioner is appealing Respondent's decision which approved an abatement of 2006 taxes based on a 2006 actual value of the subject property of \$2,826,250.00.

Petitioner's witness, Mr. R.C. Sandstrom, presented cost, market and income approaches for the subject combined with the adjacent parcel. Because of the Board's order, Petitioner's witness relied on the income approach in valuing the subject, revised in testimony to exclude the adjacent parcel.

Petitioner presented an income approach to derive a value of \$1,717,610.00 for the subject property. Petitioner concluded to a \$5.00 rental rate with 11% vacancy and 5% deduction for expenses. Petitioner contends that the 2005 calculation should be revised to include a deduction of \$176,311.00 based on 70% of the 2006 remediation costs. Petitioner contends that the Division of Property Taxation (DPT) course materials for Appraisal 030: Environmental Property Appraisal requires that assessors reflect changes in the annual environmental costs in the value of a property including intervening years. Petitioner contends that in the years prior to the date of value, significant roof, parking lot and HVAC repairs had been made to the property. Petitioner made a further deduction of \$125,830.00 for replacement reserves to cover future roof, parking lot and HVAC costs based on *Marshall Swift* costs for those items, divided by the anticipated life of each item. Petitioner further contends that under CRS 39-1-104 (11)(b)(I) further deductions are allowed as "unusual conditions" to reflect these capital costs for roof, parking lot and HVAC that are incurred periodically over the life of the building.

In closing arguments, Petitioner requested a 2006 actual value of \$1,717,620.00 for the subject property.

Respondent's witness, Mr. Jerry Harris, presented cost and market approaches; however, testified that no weight was given to either of these approaches. Respondent used the income approach to derive a value of \$2,830,000.00 for the subject property. In the income approach, Respondent calculated the value of the subject using the same methodology as indicated in the 2005 BAA order, changing only the environmental expense deduction to \$176,312.00. Respondent agrees that DPT course materials allow for recalculation of property value in the intervening year to reflect changes in environmental costs. However, Respondent testified that neither this change nor the inclusion of a higher level of reserves for replacement would qualify as an "unusual condition" as allowed by statute for changes in value for the intervening year. Respondent is recommending a reduction in the 2006 value to \$2,803,352.00, equal to the 2005 value ordered by the BAA.

Respondent contends that the 2005 and 2006 values should be equal based on CRS 39-1-103(15) which states: "...in order to result in uniform and just and equal valuation for the second year of a reassessment cycle, the assessing officer shall consider the actual value of any taxable property for the first year of a reassessment cycle, as may have been adjusted as a result of protests and appeals, if any, prior to the assessment date of the second year of a reassessment cycle, to be the actual value of such taxable property for the second year of a reassessment cycle."

The Board does not find Petitioner's increase in replacement for reserves for future capital improvements that were actually completed prior to the date of value to constitute an "unusual condition" as described in CRS 39-1-104 (11)(b)(I) which states:

"The provisions of subsection (10.2) of this section are not intended to prevent the assessor from taking into account, in determining actual value for the years which intervene between changes in the level of value, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value. ... For the purposes of this paragraph (b) and except as otherwise provided in this paragraph (b), an unusual condition which could result in an increase or decrease in actual value is limited to the installation of an on-site improvement, the ending of the economic life of an improvement with only salvage value remaining, the addition to or remodeling of a structure, a change of use of the land, ...any new regulations restricting or increasing the use of the land, or a combination thereof, ...any detrimental acts of nature, and any damage due to accident, vandalism, fire, or explosion..."

Testimony indicates that as of January 1, 2006, costs associated with the roof, parking lot and HVAC had been expended, with no outstanding items of deferred maintenance reported. There was no indication that these items suffered an atypical life expectancy that would constitute an "unusual condition" as of the date of value. The reserves for replacement amount of 3.0% applied by Respondent and previously used by Petitioner in the 2005 valuation is considered reasonable and typical appraisal methodology.

The Board orders the 2006 actual value to be reduced to \$2,803,352.00 based on Respondent's recommendation for reduction.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2006 actual value for the subject property of \$2,803,352.00.

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

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

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

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, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 23rd day of December 2009.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier

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

J. Michael Beery
J. Michael Beery



**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 51555

Petitioner:

MICROSEMI CORP.,

v.

Respondent:

**BROOMFIELD COUNTY BOARD OF
COMMISSIONERS.**

ORDER

The Board issued a decision in this matter on December 23, 2009. On January 4, 2010, Petitioner's Motion for Reconsideration was filed with the Board. On January 11, 2010, Respondent's Response to Petitioner's Motion for Reconsideration was filed with the Board. Petitioner's Motion for Reconsideration is granted, and the Board's decision is modified as set forth herein.

The Board issued an order on December 31, 2007 reducing the 2005 actual value of the subject property to \$2,803,352.00. The Board's decision was affirmed by the Colorado Court of Appeals. Petitioner exercised the right to challenge the valuation for the intervening year, for tax year 2006. The appeal was heard by the Board of Assessment Appeals on November 25, 2009.

In the de novo evidentiary hearing before the Board, Petitioner presented two items that were cited as cause for a reduction in value. Petitioner contended that in the years prior to the date of value, significant roof, parking lot and HVAC repairs had been made to the property. Petitioner proposed an expense deduction of \$125,830.00 for replacement reserves to cover future roof, parking lot and HVAC costs. Reserves for replacement is a concept wherein the landlord sets aside funds annually to allow for replacement of building components that will be replaced prior to the end of the economic life of the building. In direct capitalization, appraisers must rely on market evidence in determining the amount of the deduction to be made, if any. In the valuation of the subject, Petitioner applied a deduction for reserves that was at least three times what the Board believes to be typical of the market without providing market support for any deduction, let alone the large deduction. The reserves for replacement amount of 3.0% applied by Respondent and

previously used by Petitioner in the 2005 valuation is considered reasonable and typical appraisal methodology.

Secondly, Petitioner contended that the Income Approach should be calculated to reflect a deduction of \$176,311.00 based on 70% of the 2006 remediation costs. The Board was convinced by evidence and testimony that a change in environmental remediation costs could result in a change in property valuation for the intervening year. Division of Property Taxation (DPT) course materials for Appraisal 030: Environmental Property Appraisal requires that assessors reflect changes in the annual environmental costs in the value of a property including intervening years. Respondent agreed that DPT course materials allow for recalculation of property value in the intervening year to reflect changes in environmental costs. The recalculation in this case resulted in Respondent's higher valuation in the intervening year of \$2,830,000.00. Taking into account the evidence presented, the Board agrees with Respondent's recalculation.

Based on Section 39-1-103(15), C.R.S., Respondent recommended a 2006 value of \$2,803,352.00, equal to the 2005 value ordered by the BAA and affirmed by the Court of Appeals. The Board finds that Petitioner failed to present sufficient evidence to support a lower 2006 valuation of the subject property. Based on the evidence and testimony presented and taking into account evidence concerning the previously adjudicated valuation for 2005, the Board accepts Respondent's recommended 2006 value of \$2,803,352.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2006 actual value for the subject property of \$2,803,352.00.

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

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

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

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, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 8th day of February 2010.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier

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

J. Michael Beery
J. Michael Beery

