

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ZDZISLAW SUSKI,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 59207</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 9, 2012, James R. Meurer and Diane M. DeVries presiding. Petitioner was represented by Jack Dorwart, Esq. Respondent was represented by Casie Stokes, Esq. Petitioner is protesting the 2011 actual value of the subject property.

The parties agreed to the admission of Petitioner's Exhibits A, B, C, and D and the expert testimony of David Berger and Darla Jaramillo.

Subject property is described as follows:

**609 Lupine Street, Golden, CO
Jefferson County Schedule No. 409719**

The subject property is a mixed use property. The property sits on .219 acres or 9,522 square feet of land. There are 1,071 square feet of residential property and 1,206 square feet of commercial property. The property is in the unincorporated area of Jefferson County. The residence was originally built in 1929 with 473 square feet; there were two additions, one built in 1953 of 323 square feet and another built in 1983 of 276 square feet. The residence has been significantly updated but there are structural issues with the foundation. Attached to the residence is a small office of 182 square feet that is unheated and contains a half bath, adjacent to the office is a garage that is 1,024 square feet and has been used for commercial purposes by the owner until the spring of 2011. Condition of the garage and office is considered average. The subject property is zoned C2. The residential portion is a legal non-conforming use, as long as the use does not change.

Petitioner is requesting an actual value of \$150,000.00 for the subject property for tax year 2011. Respondent assigned a value of \$386,800.00 for the subject property for tax year 2011 but is recommending a reduction to \$341,550.00.

Petitioner presented the following indicators of value:

Market:	\$150,000.00
Cost:	n/a
Income:	n/a

Petitioner's witness, David G. Berger, Certified General Appraiser, presented six comparable sales, three residential sales and three mixed use sales. The residential sales ranged in sale price from \$147,500.00 to \$209,900.00 and in size from 1,046 to 1,135 square feet. After adjustments were made, the sales ranged from \$98,950.00 to \$132,650.00. The mixed use sales ranged in sale price from \$249,000.00 to \$300,000.00 and in size from 780 to 1,290 square feet. After adjustments were made, the sales ranged from \$118,330.00 to \$160,750.00.

Mr. Berger testified that surface and subsurface water has affected the residence and the garage. The surface water has increased since RTD light rail was installed to the south of the property. When the light rail was installed, the drainage flow in and around 6th Avenue was altered and a trench previously used for drainage was redesigned. The redesign caused water to come into the garage area and damage anchors used for auto body repair to fail. The design of the concrete paving surrounding the subject also causes some of the flooding as portions of the concrete slope towards the building as opposed to sloping away from the building. Water was also noted coming into the basement and undermining some of the residence.

A review of the drainage for the subject property was performed by Kimley-Horn and Associates and the report dated June 18, 2010 is provided in Petitioner's Exhibit A. The report documents groundwater and surface water issues regarding the subject and how the construction of the RTD light rail line could have caused some of the surface and groundwater issues that have affected both the garage and residence.

The foundation was inspected by Niel Elkins, professional engineer, and an estimate dated April 4, 2010 by Cain Construction gives the cost to cure the foundation of the residence in the amount of \$75,000.00 to \$100,000.00. The final conclusion was that the foundation damage was so extensive that it was recommended the residence be demolished and a new foundation constructed. A separate estimate dated July 9, 2010 from Cain Construction Company gives a cost to cure the concrete paving and installing a trench drain as recommend by Kimley-Horn. The cost to cure the concrete and surface drainage is \$53,200.00. These estimates are also provided as exhibits. The total of the two estimates ranged from \$128,200.00 to \$153,200.00.

A sump pump was installed April 29, 2010 by Bear Mountain Mechanical to help alleviate the groundwater issue. The cost of the sump pump was \$3,595.00.

A lawsuit was filed against RTD for damages by John Clikeman, Esq. on behalf of Petitioner. A settlement in the amount of \$49,437.00 was negotiated as RTD was determined to be partially liable for some of the damages incurred. This amount was insufficient to cure all of the issues associated with the property.

Mr. Berger testified that there are obvious structural settlement issues associated with the home and the floors are not level. There is a small basement/crawlspace that is accessible only by the use of a floor hatch. This area contains the furnace and hot water heater. Upon inspection of the basement/crawlspace, it was noted that the foundation under the original house had significant structural damage as 1-2 inch cracks were easily visible. The ventilation chimney for the furnace and hot water heater is unusable according to a local contractor that was hired to install a new vent pipe on the property. The original chimney has bricks that have collapsed. There were also signs of water infiltration; although no water was present at the time of inspection. The exterior is frame with wood siding. The roof and soffit also showed signs of settling that mirrored the settling of the interior floors. Even though the interior has been maintained, with the settling and foundation issues the overall condition of the residential building is considered to be fair.

In the garage, the built-in anchoring system used for straightening car frames has become unusable due to infiltration and flooding of surface water. Overall condition of the garage is considered average.

Mr. Berger testified that he believes that a negative adjustment of \$75,000.00 should be applied to the comparable sales for the foundation/structural issues.

Respondent presented the following indicators of value:

Market:	\$341,550.00
Cost:	Unreliable
Income:	Unreliable

Respondent presented four comparable sales ranging in sale price from \$200,000.00 to \$450,000.00 and in size from 1,121 to 2,572 square feet. After adjustments were made, the sales ranged from \$170,000.00 to \$359,978.00.

Darla K. Jaramillo, Certified General Appraiser with the Jefferson County Assessor's Office, testified that historically, all improvements have been viewed as being adequately maintained, in average condition and quality. In 2003, Petitioner submitted an appeal claiming structural and roof damage due to a snow storm. An estimate to cure was submitted for \$38,000.00; however, Petitioner stated that he spent \$44,000.00 to cure the damage and the repairs were completed as of May 28, 2003. The 2003 actual value was reduced by the cost to cure value based on Petitioner's information.

In 2011, Petitioner submitted an appeal to the Assessor's Office for a reduction of property value based on a claim of structural damage due to the storm water flooding caused by the RTD Fastrack construction; however, Petitioner submitted no documentation. A site inspection was

the original structure not valued by the Assessor's Office was found. This unfinished area housed a furnace unit that appeared newer.

Ms. Jaramillo stated that after speaking with Petitioner on April 12, 2012, she discovered that the monetary settlement to cure any claimed damages was not utilized to cure the damage. The foundation damage still remains. She believes that cost to cure should be given once to repair the property; after the damage is cured, then the property should go back to market value. However, in this case, since the funds were not used to cure the damage, Ms. Jaramillo believes that it is appropriate to apply a 10% functional obsolescence to the final conclusion of value.

Respondent assigned an actual value of \$386,800.00 to the subject property for tax year 2011. However, Respondent is recommending a reduction in 2011 actual value for the subject property to \$341,550.00.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2011 valuation of the subject property was incorrect. There is no dispute that the property suffers from structural damage.

The Board believes that the subject property should be valued by using comparable sales of other mixed use properties rather than residential properties. One of the sales used by the parties was the same. Petitioner's witness used qualitative adjustments while Respondent's witness used quantitative adjustments. The Board believes that using quantitative adjustments is appropriate.

The Board concludes that Petitioner's negative foundation/structural adjustment of \$75,000.00 should be applied to the sales comparison approach used by Respondent instead of using a 10% functional obsolescence. The property should be valued at \$110.00 per square foot applied to subject square footage of 2,277 for a total 2011 actual value of \$250,470.00, \$250,000.00 rounded.

The Board concludes that the 2011 actual value of the subject property should be reduced to \$250,000.00.

ORDER:

Respondent is ordered to reduce the 2011 actual value of the subject property to \$250,000.00.

The Jefferson County Assessor is directed to change his/her 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 of the respondent county, 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).

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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

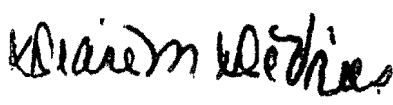
Section 39-8-108(2), C.R.S.

DATED and MAILED this 24th day of May, 2012.

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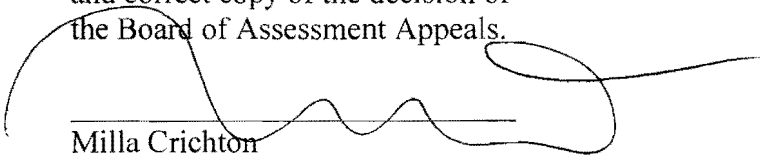


James R. Meurer



Diane M. DeVries

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



Milla Crichton

