

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**  
1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 67585**

Petitioner:

**BALL CORPORATION,**

v.

Respondent:

**JEFFERSON COUNTY BOARD OF  
EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on July 7-8, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Casie Stokes, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties stipulated to the admittance of Mr. Robert M. Noesner, Colorado Certified General Appraiser with National Valuation Consultants, Inc. and Mr. Joel Cuthbert, Colorado Certified General Appraiser with the Jefferson County Assessor's Office as expert witnesses. Both parties also stipulated to the admission of Respondent's Exhibits A, D, and E, as well as Petitioner's Exhibits 1, 2, 3 and 5 as evidence.

Subject property is described as follows:

**9675 W. 108<sup>th</sup> Circle, Westminster, Colorado  
Jefferson County Schedule No. 449596**

Petitioner identifies the subject as a 206,766-square foot owner occupied light manufacturing building. Respondent estimates the building is 209,773 square feet and better described as a research and development property. Approximately 60% of the building was constructed in 1987/1988. A large, two-story addition of nearly 70,000 square feet was added in 2006. Finally, a second story office area was added in 2011.

The building is fully air-conditioned, heated and humidity controlled, and has fire sprinkler system throughout. Just over half of the building is used for production and light assembly of ceramic antennas used in defense contracting. A portion of the building has 46-foot clear ceiling height to allow interior loading of the antennas onto semi-trailers.

Petitioner is requesting an actual value of \$6,775,000 for the subject property for tax year 2015. Respondent assigned a value of \$19,049,000 for the subject property for tax year 2015.

Mr. Noesner first determined the value of the subject as if unimpaired, then made a deduction for perceived issues related to roof replacement, boiler/chiller replacement, and structural damage due to expansive soils. Petitioner utilized the net rentable square footage of 196,908 to value the subject and presented the following unimpaired indicators of value:

Market:	\$13,000,000
Cost:	Not applied
Income:	\$14,500,000

Petitioner's witness, Mr. Noesner, presented a market approach consisting of seven comparable sales ranging in sale price from \$4,075,000 to \$16,072,000 and in size from 111,708 to 362,291 square feet, indicating a range in value of \$11.25 to \$67.31 per square foot. The sales were adjusted for finished office area, deferred maintenance, property rights conveyed, location, age/condition/construction, building size, floor area ratio, ceiling height and functional utility. After adjustments were made, the sales ranged from \$23.45 to \$66.29 per square foot. Sales 1 and 5 were considered most comparable, indicating a narrow range of \$61.00 to \$66.00 per square foot. Mr. Noesner concluded to a value at the upper end of the range, based primarily on Sale 1, at \$13,000,000 or \$66.02 per square foot.

Petitioner presented an income approach to derive an unimpaired value of \$14,500,000 for the subject property. Nine comparable rental properties were relied on in the analysis of market rent. Prior to adjustment, they indicated a range between \$3.50 and \$9.95 per square foot. Mr. Noesner concluded to rent of \$7.00 per square foot net of expenses. A 10% deduction was made for vacancy and collection loss, followed by a small management expense of \$5,000 or \$0.03 per square foot. The net operating income of \$1,235,520 was capitalized at a rate of 8.50% based on market extraction from sales, investor survey, and development of a debt coverage ratio analysis.

Both methods were given some consideration. However, Mr. Noesner gave slightly more weight to the market approach in his final conclusion of unimpaired value of \$13,500,000.

Petitioner contends that costs associated with replacement of the roof, boilers and chillers as well as costs of structural damage due to expansive soils should be deducted from the unimpaired value to reflect the condition of the subject as of the January 1, 2015. Petitioner presented internal memos from Ball Corporation as well as contractor cost proposals as support for each deduction. Regarding replacement of the roof and roof structure, Mr. Noesner deducted \$1,449,960 from the unimpaired value.

Documentation was also provided to support replacement of the boilers and chillers over a three-year period, at a cost of \$1,222,155. Both reportedly run 24/7, year-round to reduce static in the facility, which is necessary to the product manufacturing process.

Expansive soils under the 2006 building expansion created significant damage to the building, requiring new drain systems, removal of ground water, as well as caisson and support replacement. This was identified as a four-phase process, with costs shown for the first three phases. Petitioner contends that identified costs for the first three phases should be deducted. Mr. Noesner applied a deduction of \$4,387,763 in his appraisal; however, this was reduced to \$4,054,516 at hearing after the elimination of costs associated with legal issues surrounding the soil expansion issue. Petitioner is requesting an actual value of \$6,775,000, rounded, for the subject property for tax year 2015.

Mr. Cuthbert, witness for Respondent, first determined the value of the subject as if unimpaired, then made a deduction for structural damage due to expansive soils. Respondent presented the following indicators of unimpaired value:

Market:	\$25,150,000
Cost:	\$25,550,000
Income:	\$25,700,000

Mr. Cuthbert presented a market approach consisting of five comparable sales ranging in sale price from \$13,200,000 to \$27,200,000 and in size from 130,847 to 261.825 square feet, indicating an unadjusted range of \$61.49 to \$171.03 per square foot. A qualitative analysis was provided, with adjustments made for land-to-building ratio, location, building size, quality, percent finished, wall height, and functional utility. After adjustments were made, the sales indicated a value towards the middle of the range, with Sale 3 considered most similar to the subject. Mr. Cuthbert concluded to a value of \$120.00 and applied that amount to his gross square footage of 209,733 to present a value of \$25,150,000 via the market approach.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$25,550,000. The value of the subject site was based on an analysis of six sales that transacted between September 2011 and July 2014, which indicated a range of \$5.00 to \$13.69 per square foot. He concluded to a land value of \$5.00 per square foot or \$3,098,215. Replacement cost was based on Marshall Valuation Service cost data for an Industrial, Engineering and Research Building. Depreciation was based on an effective age of 1995 for the original portion of the building, effective age of 2008 for the second building and 2011 for the second floor office area. The depreciated value of the building improvements was concluded as \$21,950,040. Depreciated value of building amenities and site improvements in the amount of \$447,374 and \$65,903 respectively, were added.

Respondent used the income approach to derive a value of \$25,700,000 for the subject property. Four leased properties were analyzed to determine market rent for the subject. Prior to adjustment, they indicated a net rental rate range of \$10.50 to \$14.10 per square foot. Rent Comparable 1 was considered as most similar to the subject, with a rental rate of \$10.50 per square

foot net of expenses applied to the subject. Deductions included 10% for vacancy and 6% for owner's non-reimbursed expenses. Mr. Cuthbert relied on investor surveys and market extraction from sales to determine the appropriate capitalization rate for the subject. A capitalization rate of 7.25% was used against a net operating income of \$1,863,058 to reach a value of \$25,700,000 using the income approach.

Respondent contends that no deduction is required for either roof replacement or replacement of the boilers and chillers, as they were dated, but functioning as of January 1, 2015. Mr. Cuthbert determined that a deduction of \$1,600,000 was appropriate for Phase 1 of structural repairs due to soil expansion on site. Based on a memo obtained from Petitioner (Resp. pg 62) Mr. Cuthbert believed that Phases 2 and 3 would be deferred until the results of Phase 1 had been assessed. He felt that no additional deduction was appropriate for Phases 2, 3 or 4.

Giving equal consideration to all three approaches, Mr. Cuthbert concluded to an unimpaired value of \$25,250,000; then, deducted \$1,600,000 for Phase 1's structural repairs to estimate market value of \$23,650,000.

Respondent assigned an actual value of \$19,049,000 to the subject property for tax year 2015.

Although there are multiple issues before the Board in this case, the appropriate designation of this property (i.e. flex industrial, light manufacturing, R&D) is one of the most pivotal issues. The subject property is occupied by the owner, Ball Corporation, and was designed to meet their specific needs, including research and development, light manufacturing, light assembly and office use. A portion of the building was designed with atypically high, 46-foot clear ceiling height to allow interior semi-truck access for shipping. Other building features specific to Ball's use included heavy floor load capacity in production areas, an air handling system used to circulate controlled air throughout the building, sprinkler system throughout the building, and heavy power. The building included some clean room area; however, neither party was able to identify the air filtration level as being significant. Based on both parties' descriptions of the building, the Board was convinced that there was a significant amount of personal property located within the subject, including a large product testing chamber.

Petitioner reported the subject as having 55% of the building used for assembly, testing and warehouse use. Office represented 13%, common space 29% and the remaining 3% used for computer area, conference, training and storage.

The Board notes that under the Highest and Best Use section of Respondent's Appraisal Report, Mr. Cuthbert concludes "that the highest and best use of the subject property as 'improved' would, in all probability, be relatively similar to the current use as an industrial flex building." Nevertheless, Respondent valued the subject under an extraordinary assumption that over 75% of the building was finished as research and development space, partially attributable to the general product line of the owner rather than the actual features of the subject building.

Based on testimony and evidence presented, the Board finds Petitioner's description of the subject as a light manufacturing facility to be more accurate than Respondent's assumption that it is primarily research and development use.

Respondent applied a cost approach to value the subject. The Board finds that the identification of the subject as an Industrial, Engineering and Research Building (based on Marshall Valuation Service data) overstates the replacement cost of the building. Respondent's assignment of an actual age of 1995 to the portion of the subject built in 1988 is arbitrary, causing physical depreciation to be understated. The Board was convinced by Petitioner's testimony that some features of the building represented functional super-adequacy (such as the 46-foot clear ceiling height in the warehouse area) that should have been deducted from Respondent's cost analysis. As the subject was built for the owner's specialized use, it is unlikely that special features would be recognized as adding value in the marketplace. The Board gives no weight to Respondent's cost approach.

While both parties considered that the lack of comparable lease data for a large single tenant light manufacturing facility caused the income approach to be less reliable. The most likely buyer of the subject would be an owner occupant, like the current owner.

Both parties presented a sales comparison approach, relying on sales of larger sized properties located along the Front Range. The Board finds Respondent's sales to be far superior to the subject, which were then incorrectly adjusted under the assumption that the subject included 75% finish and was primarily a research and development facility. For example, Mr. Cuthbert included a clearly superior, recently constructed, LEED certified, build-to-suit facility (Sale 3), that is leased for 20 years to a credit tenant (the Federal Government for archive purposes), with no adjustment to the \$118.63 indicated price. Respondent concluded to a value of \$120.00 using the sales comparison approach, based on a broad range of indicated value, above \$67.31 and below \$156.67 per square foot.

Petitioner analyzed seven sales in the market approach, including several single tenant properties that were purchased for owner occupancy. Mr. Noesner concluded to a value at the upper end of the indicated range, at \$66.02 per square foot, similar to the low end of the range indicated by Respondent in the sales comparison approach.

After consideration of all three approaches to value, the Board finds the market approach to present the most reliable indication of the value of the subject as a light manufacturing facility. Petitioner's value of \$66.00, rounded, per square foot is well supported by the analysis of more comparable sales.

The parties applied different square footages in their valuation of the subject. Petitioner contends that a net rentable square footage of 196,908 should be applied, rather than a gross square footage of 206,766. Respondent applied a gross square footage of 209,773, which was derived by Mr. Cuthbert based on assumptions, not actual measurements of the building or based on plans provided by Petitioner. As the subject is an owner occupied, single user facility, and any future buyer would most likely be the same, use of a gross square footage is more typical of the market. The

Board concludes that the value of the subject unimpaired is \$13,646,556 based on a value of \$66.00 per square foot and a 206,766-square foot building size.

Both parties agreed that a deduction for costs associated with curing structural damage caused by expansive soils was reasonable. Exhibits and testimony support that Phase 1 was underway on the date of value. The parties arrived at the same deduction, although based on different approaches. A deduction of \$1,600,000 for Phase 1 costs was agreed to by the parties at hearing.

Petitioner contends that additional deductions are required for future phases associated with the expansive soils issue. In a memo dated May 19, 2015, additional phases are in question; although a memo dated December 22, 2015 indicates additional costs. The Board finds that on the date of value future expenditures were speculative; therefore, no additional deduction is reasonable for the tax year 2015 valuation.

Petitioner presented bids and supporting documentation identifying deferred maintenance costs for roof repair/replacement along with replacement of the boilers and chillers. Although the documentation was prepared post base period, the chillers and boilers were identified as original to the building, and had surpassed typical life expectancy. The roof on the 114,680-square foot building completed in 1987 was original as of the date of value. Respondent contends that these items were functional on the date of value; however, it is reasonable that a prospective buyer would negotiate a deduction for these items based on an inspection. An additional deduction of \$1,449,960 to replace the roof on the original building and a deduction of \$1,222,155 for replacement of the chillers and boilers is found reasonable by the Board.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect. The Board concludes that the 2015 actual value of the subject property should be reduced to \$9,375,000.

**ORDER:**

Respondent is ordered to reduce the 2015 actual value of the subject property to \$9,375,000.

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-nine 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-nine days after the date of the service of the final order entered).

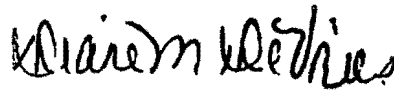
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 25th day of August, 2016.

**BOARD OF ASSESSMENT APPEALS**

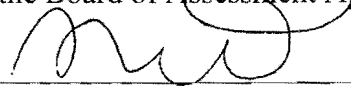


Diane M. DeVries



Sondra W. Mercier

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



Milla Lishchuk

