

<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>BALL CORPORATION,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No. 68903</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 23, 2017, MaryKay Kelley, Gregg Near, and Sondra Mercier presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Casie Stokes, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2013 and 2014.

Respondent requested the Board to reconsider the Board's February 17, 2017 Order granting Petitioner's Motion to Quash the Subpoena previously issued against Kevin St. Clair. Respondent requested a subpoena be issued for Mr. St. Clair, an employee of Ball Corporation, because he was present during the November 23, 2016 inspection of the subject property attended by Respondent's appraisers, Mr. Joel Cuthbert and Mr. Harold McCloud. On January 10, 2017 the Board issued a subpoena for Mr. St. Clair's attendance at the hearing. On January 17, 2017, after learning that Mr. St. Clair was hospitalized and on life support outside the United States and unable to testify at hearing, Petitioner filed a Motion to Quash the Subpoena.

During the March 23, 2017 hearing, the Board allowed into evidence testimony from Respondent's witnesses regarding Mr. St. Clair's comments, along with Petitioner's witness, Mr. Guy Fromme's opinion that Mr. St. Clair had limited responsibility for the subject, and was not responsible for the operation or condition of the property. Given the health issues facing Mr. St. Clair, the Board accepts the testimony of witnesses at hearing without requiring the appearance of Mr. St. Clair. Respondent's Motion to Reconsider is therefore denied.

Respondent requested that the Board grant a Motion for Board View of the subject as part of the hearing process. Based on photographic evidence and testimony of the parties, the Board finds

sufficient information has been provided to allow the Board to understand the quality, condition, and layout of the subject without need for an inspection. In the Board's opinion, the view will not aid the Board's understanding of the evidence being presented and the interests of justice and fairness do not otherwise warrant the view. Respondent's Motion for Board View is denied.

Subject property is described as follows:

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

The subject property is an owner-occupied facility built on a 14.225-acre site in phases dated 1987, 2006 and 2012 (mezzanine). The building encompasses 206,766 square feet of gross area per Petitioner's appraisal witness and 206,291 square feet per Respondent's appraisal witness. Petitioner applied a rentable square footage of 196,908 in its valuation analyses. Uses include office, production, light assembly, research and development, warehouse area, cafeteria, and common space (computer, conference, training/stores, mechanical, storage, hallways stairwell/elevators).

Respondent assigned an actual value of \$17,375,000 for tax years 2013 and 2014, which is supported by an appraised value of \$20,500,000. Petitioner is requesting a value of \$5,400,000 for tax year 2013 and \$5,500,000 for tax year 2014.

Petitioner's witness, Mr. Robert M. Noesner, Certified General Appraiser with National Valuation Consultants, Inc. applied a two-step process to value the subject by first providing an unimpaired value for the subject, then deducting cost to cure deficiencies to conclude to an impaired value. He noted three areas of deficiency. First, structural movement was first detected in 2012, with an initial expenditure of \$67,957 made in 2013. Movement continues to be monitored, and expansive soils will require soils stabilization and groundwater remediation to ensure continued use. Second, boilers and chillers, original to the building and operable 24 hours a day for 365 days a year, have reached the end of useful life and require replacement. Third, the roof and parapet on the 1987 building has a design flaw that requires replacement of the original roof.

Petitioner presented the following indicators of **unimpaired** value:

Market:	\$12,800,000
Cost:	N/A
Income:	\$14,100,000

Mr. Noesner, defined the subject's highest and best use as a light manufacturing/assembly/warehouse operation.

Mr. Noesner noted the following super adequate features, the cost of which he testified may not be recoverable in the market; the 46' ceiling height in the 2006 addition, and the fully climate controlled environment. Mr. Noesner declined use of the Cost Approach because of the age of the building and difficulty in addressing items of super adequacy and obsolescence.

Based on the market approach and valuing the subject's 196,908 rentable square feet, Mr. Noesner presented five comparable sales ranging in sale price from \$29.71 to \$69.78 per square foot. After adjustments, the sales ranged from \$41.40 to \$65.45 per square foot. He concluded to an unimpaired range of \$60 to \$65 per square foot, reconciling to a total value of \$12,800,000 or \$65.01 per rentable square foot. The 2011 listing of the former Apple facility in Fountain, Colorado was also noted in the analysis.

Mr. Noesner presented an Income Approach with six comparable rentals indicating rents of \$3.50 to \$9.95 per square foot net of expenses. Based on single-user occupancy, the size of the subject building, and the tendency for long periods of vacancy, he concluded to a rate of \$7.00 per square foot. The concluded rate was supported by two additional transactions (a former Apple facility in Fountain at \$4.75 per square foot and One Directory Place at \$7.16 per square foot (Sale Five)). He deducted 10% for vacancy and collection loss and a minor management fee of \$5,000 for a net operating income of \$1,235,520 or \$6.27 per square foot. He researched three methods for determination of capitalization rate: market extraction concluding to a range from 6.5% to 9.45% ultimately adopting 8.75% due to perceived risk; and the debt coverage ratio (DCR) method which indicated 8.77%. Considering the subject's expansive soil and associated risk, he estimated a rate at the high end of the range or 8.75%. Application of the capitalization rate to the net operating income indicated a market value of \$14,100,000, rounded, or \$71.61 per rentable square foot.

Mr. Noesner assigned greater weight to the Sales Comparison Analysis to conclude to an unimpaired value of \$13,300,000.

Petitioner's witness then applied the following repair/replacement costs: \$1,449,960 for replacement of the 1987 roof; \$1,222,155 for replacement of the boilers and chillers; and mitigation of the expansive soil resulting in structural damage (\$5,222,194 for 2013 and \$5,154,237 for 2014). Mr. Noesner concluded to an (impaired) value of \$5,400,000 for tax year 2013 and \$5,500,000 for tax year 2014.

Petitioner's witness, Guy Fromme, Manager, Business Unit Facility Management, Ball Corporation, discussed the structural/groundwater issue. He testified that the first notable movement in the northwest corner of the 2006 building was observed by employees in 2012. The structural issues were first identified as movement of an expansion joint in the compact range area that was discussed in an email dated May 29, 2012. Mr. Fromme testified that Ball was aware that the site had expansive soils during the 2006 expansion; however, the original drainage was not properly installed and water was pooling under the building. Following inspections, engineers were hired to design corrective actions; Phase 1, which included repair of the groundwater drainage system and repair of caissons that had moved, began in October 2014. Initially, the scope of Phases 2 and 3 were not specified, but were anticipated after completion of Phase I. In a memo updated December 22, 2015, Mr. Fromme identified the need for Phase 2 as "the new under drain system [was] not able to collect all of the ground water infiltrating the expansion footprint." This was based on data from ground water monitoring wells and surface water along the south foundation. Mr. Fromme testified that if caissons continued to move, Phase 3 would involve further review of drainage.

Mr. Fromme discussed issues concerning the roof on the original portion of the building, which he contended has surpassed its economic and useful life, despite repairs. He also noted that the vapor barrier, intended to contain the relative humidity at the interface to the parapet, had been leaking since installation. He testified to a replacement cost of \$1,450,000. Reconstruction began in October of 2015.

Mr. Fromme referenced Exhibit 9, which details the maintenance history of the building's boilers and chillers, and Exhibit 20, which outlines maintenance costs to date. Original to the building, Petitioner argued that many of the systems now exceed their life expectancy. Replacement of boilers in 2016/2017 and chillers in 2017/2018 has been prioritized in budgeting.

Respondent presented the following indicators of value:

Market:	\$21,050,000
Cost:	\$20,340,000
Income:	\$20,830,000

Respondent's witness, Harold S. McCloud, Certified General Appraiser, defined the subject as an engineering/manufacturing facility (market defined - flex/research and development). He referenced the Official Development Plan (ODP) per the City as allowing "limited office/research and development, light assembly", and the subject's PUD zoning classification restricts development of the site to the same designation. He considered highest and best use to be continuation of current use with the most likely buyer a single-user tenant.

Mr. McCloud presented a Cost Approach concluding to a value of \$20,340,000. Mr. McCloud estimated a land value of \$7.00 per square foot or \$4,340,000 based on analysis of four comparable sales. Referencing Marshall Valuation Service (MVS), he defined 136,072 square feet of the building as "engineering" and the remaining 70,219 square feet as "heavy manufacturing". Replacement cost new is estimated at \$34,505,141. Mr. McCloud estimated the effective building age at 15 years, with an economic life of 55 years. He estimated incurable physical depreciation of 9.5% per Marshall Valuation Service tables. Functional obsolescence due to super adequacy (47-foot ceiling height) was deducted in the amount of \$200,000. External obsolescence for the difference between market and feasibility rent resulted in a deduction of 43.7% or \$14,363,011. The total depreciated value of the improvements was estimated at \$16,000,631. Adding land value to depreciated value of the improvements, the value indicated by the cost approach is calculated at \$20,340,000, rounded.

Mr. McCloud presented an Income Approach concluding to a value of \$20,830,000. He estimated a lease rate of \$9.35 per square foot, concluding at the lower end of the range indicated by extrapolation from sales (\$9.35 to \$13.06 per square foot). A test of reasonableness, based on Newmark Knight Frank Frederick Ross surveys, supported Mr. McCloud's rate. He then applied estimated tenant reimbursements, a vacancy rate of 5%, expenses, management and reserves to arrive at a net operating income of \$1,677,233. Mr. McCloud estimated a capitalization rate of 8% based on an analysis of rates from the comparable sales, investor surveys, and mortgage equity analysis.

After consideration of a deduction for functional obsolescence (\$200,000 for ceiling height), Mr. McCloud concluded to a value of \$20,830,000, rounded, based on the Income Approach.

Mr. McCloud presented a Market Approach with seven comparable sales ranging in sale price from \$72.19 to \$138.52 per square foot with a mean of \$96.76. After adjustments for lease rates, sale prices ranged from \$72.19 to \$113.99 per square foot with a mean of \$94.71. He concluded to a value of \$103.00 per square foot and then applied a deduction of \$200,000 for functional obsolescence to arrive at an indicated value of \$21,050,000. He gave no weight to this approach.

Mr. McCloud placed greatest weight on the Cost Approach, reconciling to a value of \$20,500,000. Mr. McCloud made no deduction for deferred maintenance. He testified that the boilers and chillers, while original, remained serviceable. Structural movement was first observed in 2012, and analysis occurred after January 1, 2013 with nothing definitive known as of January 1, 2014. He assumed the roof was structurally sound.

Respondent's witness, Joel Cuthbert, Commercial Appraiser for the Jefferson County's Assessor's Office, testified to conversations that took place with Mr. Kevin St. Clair during Respondent's inspection of the subject facility in 2016. He noted that Mr. St. Clair, a Facilities Engineer with Ball Corporation indicated that structural repairs and work on caissons had been completed, were the result of the RCS Test Chamber (aka. Anechoic chamber), and that he was not aware of a need for additional caisson repair.

After consideration of the evidence and testimony of both parties, the Board finds that the subject was overvalued for tax years 2013 and 2014.

In its review, the Board considers the following issues:

1. What is the best description of the subject property for use?
2. What is the best methodology to value the property by use?
3. Was there sufficient evidence to suggest a deduction for issues concerning the roof, boilers, chillers, and structural damage due to expansion of soils?

Respondent correctly contends that a "key controversy in this case is how to correctly describe, classify, or identify the subject property." Photos, floorplans, and testimony from both parties outlined uses in the building as: office, training, conference rooms, testing area, multiple assembly areas, cafeteria, mechanical rooms, and warehouse areas. Mr. McCloud accurately describes the building as "an amalgamation of building types...designed to operate as a single unit." He further suggests that "the owner's integrated operation could be argued to be a special purpose/limited use" with "multiple floor plate designs, isolated work areas with multiple level clear ceiling heights." It is clear to the Board that there are many uses represented within the subject building, which was originally designed in the late-1980s and expanded in 2006 and 2012, all to meet the owner's specific use.

Respondent contends that the Official Development Plan (ODP) per the City allows “limited office/research and development, light assembly”, and the subject’s PUD zoning classification restricts development of the site to the same designation and that Petitioner’s valuation as a light manufacturing/assembly/warehouse is not a legal use. At the same time. Respondent values one-third of the building as heavy manufacturing.

To value the property, it is necessary to define the use to some extent, even if it is considered “special use.” For this reason only, the Board would describe it as a light manufacturing facility. All other components (such as office, assembly, research) support the manufacturing process.

By statute, all three approaches must be considered in the valuation of the subject. Both parties applied the Sales Comparison Approach and the Income Approach. Respondent also applied the Cost Approach, giving it the greatest reliance in the conclusion of value.

The Board found issues related to Mr. McCloud’s Cost Approach, particularly in the valuation of the land and the calculation of all forms of depreciation. Mr. McCloud presented four land sales that transacted between July 2008 and April 2012. The sales were similar in size to the subject, all located in the northwest portion of the metro area. The sales indicated an unadjusted range of \$4.94 to \$12.11 per square foot. After adjustment, the sales indicated a range of \$4.94 to \$8.66 per square foot. Mr. McCloud concluded to a value near the adjusted median of \$7.00 per square foot. Regarding land Sale 1, Mr. McCloud’s report notes that “the general location, lot location, lot size, site configuration and zoning are all considered generally similar to the subject and no adjustments are required.” Sales 2, 3, and 4 were each adjusted downward by 35%, yet the same reliance was placed on all four sales. The Board finds that Land Sale 1 provides the best indication of value of the subject site, at \$5.00 per square foot, despite being at the lower end of the range, reducing land value to \$3,100,000, rounded.

Both parties agreed that the ceiling height of 46 feet represented functional super-adequacy. Respondent’s Cost Approach includes an increase in estimated costs of \$3,950,000 for the higher ceiling height, yet Mr. McCloud applied a small \$200,000 deduction in the Cost Approach as functional obsolescence, based on an increase in cost of \$0.50 to maintain that portion of the building for the long term. The Board was convinced that additional functional obsolescence included the subject’s multiple levels, while the heating, air conditioning, and humidity control throughout the building would represent additional functional super-adequacy, none of which was adjusted by Mr. McCloud. Common practice in the appraisal industry limits use of the Cost Approach when valuing older properties where physical deterioration, functional obsolescence, and external obsolescence exist. Therefore, the Board finds the Cost Approach to have limited relevance.

Although both parties applied the Income Approach, neither relied on rental information for properties that were comparable to the building based on the use (light manufacturing), large size, and owner-specific design.

After consideration of all three approaches to value, the Board finds the market approach to present the most reliable indication of value of the subject as an owner-occupied light manufacturing building. Of the twelve sales provided by the parties, only two represented properties purchased for

single tenant or owner occupancy, but neither was found by the Board to be convincing as to the unimpaired value of the subject.

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 206,291 in its valuation of the subject. 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 appropriate.

Petitioner contends that a deduction for costs associated with curing structural damage caused by expansive soils was required. Exhibits and testimony identified that structural issues were identified but not quantified as of May 2012. Lack of scope and cost information does not mean that adjustment is not warranted. The Board is convinced that structural issues were known to Petitioner by the date of value, based on the email dated May 29, 2012, where movement of an expansion joint in the compact range area was first identified.

Respondent contends that repair to the structure was required only to meet the needs of Ball Aerospace. Mr. Fromme testified that the damage would have resulted in repairs for any user, as equipment movement (i.e. crane) and structural breaks (i.e. breaks in fire sprinkler system and plumbing lines) would have caused damage to the entire structure over time. Petitioner provided adequate support that items identified as Phase 1 repair costs should be deducted in the amount of \$2,751,632 for tax year 2013 and \$2,683,675 for tax year 2014. Internal memorandums and emails provided by Petitioner suggest that, as of the date of value, future Phases of structural repairs were speculative and dependent on the outcome of Phase 1 repairs. No additional deduction for additional Phases is supported for tax years 2013 and 2014.

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, having reached typical life expectancy. The roof on the original building completed in 1987 was original as of the date of value. Respondent contends that these items were functional on the date of value and that Ball's specific use of the building caused the issues associated with the roof, structure, boilers, and chillers (i.e. humidity control, equipment weight, 24/7/365 operation of HVAC equipment). While this may be true, a knowledgeable buyer would either expect these items to be cured or would pay a lower price for the property to compensate for the issues, regardless of accountability for each item. 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.

## **ORDER:**

Petitioner presented sufficient probative evidence and testimony to convince the Board that the \$17,375,000 value assigned by Respondent to the subject property for tax years 2013 and 2014 is incorrect. "A taxpayer's burden of proof in a BAA proceeding is well-established: a protesting

taxpayer must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding." *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005).

Petitioner convinced the Board that Respondent incorrectly valued the property as an engineering/manufacturing facility (market defined - flex/research and development), as opposed to a light manufacturing facility. Petitioner also convinced the Board that the \$20,500,000 appraised value used by Respondent to support the \$17,375,000 assigned value did not adequately consider the Phase 1 repair costs (\$2,751,632 for tax year 2013 and \$2,683,675 for tax year 2014), the cost to replace the roof on the original building (\$1,449,960) or the cost to replace the chillers and boilers (\$1,222,155). Taking these factors into consideration, the Board is convinced that the \$17,375,000 assigned value is incorrect, and the actual value of the subject property is less than \$17,375,000.

While Petitioner met the burden of proving the \$17,375,000 assigned value is incorrect, the Board is not convinced by Petitioner's valuation of the subject property (\$5,400,000 for tax year 2013 and \$5,500,000 for tax year 2014), and the Board is unable to determine the actual value of the subject property based on the evidence presented at the hearing. Accordingly, the Board remands this matter to Jefferson County for a new assessment. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (2005) ("... the BAA may properly remand the matter for an accurate assessment by the county, which is charged with the duty of assessing properties in accordance with the statutory mandate in the first instance.")

In preparing the new assessment, the Assessor should apply an accepted market approach to determine the actual value of the subject property for the 2013 and 2014 tax years by using adequate sales of the fee simple interest, single tenant/owner occupied, light manufacturing facilities that are comparable to the subject. While the preference of the Board is for sales of properties located along the Front Range of Colorado that occurred within the 18-month base period, consideration would also be given to a broader geographic region or sales from the extended base period if they are found comparable or adequately adjusted.

In developing the market approach, the Assessor should use 206,291 square feet of gross area for the subject property. In comparing the condition of the comparable properties to the subject property, the Assessor should give consideration to the Board's findings with respect to the Phase 1 repair costs for the 2013 and 2014 tax years as well as the replacement costs of the roof, chillers and boilers.

Respondent shall provide the new assessment to Petitioner and the Board of Assessment Appeals by no later than August 1, 2017. Petitioner shall file a notice with the Board of Assessment Appeals by no later than August 31, 2017 if Petitioner disagrees with the value determined in the new assessment. Upon receipt of such notice, the Board of Assessment Appeals will set this matter for hearing.

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

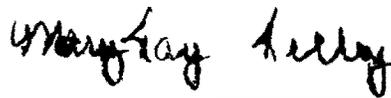
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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.

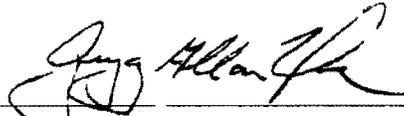
Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 23rd day of May, 2017.

**BOARD OF ASSESSMENT APPEALS**



MaryKay Kelley

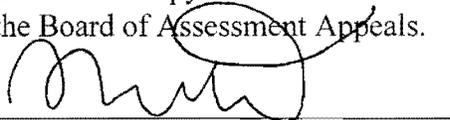


Gregg Near



Sondra Mercier

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



Milla Lishchuk