

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LEE R. KUNZ, JR.,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Ralph H. Jacobson, Agent R. H. Jacobson & Co.</p> <p>Address: 2861 Kendrick Street Golden, Colorado 80401-1362</p> <p>Phone Number: (303) 278-2185</p> <p>Attorney Reg. No.:</p>	Docket Number: 37914
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on July 30, 2001, Mark R. Linné, Claudia D. Klein, and Karen E. Hart presiding. Petitioner was represented by Ralph Jacobson, Agent. Respondent was represented by Martin McKinney, Esq.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**SEC 22 TWN 03 RNG 69 QTR NE
(Jefferson County Schedule Nos. 043085 & 069970)**

Petitioner is requesting an abatement/refund of taxes on the subject properties for tax year 1999. The subject properties consists of two parcels comprising several industrial buildings built between 1971 and 1986 and consisting of square footages of 29,600 and 19,400 square foot per respective schedule.

ISSUES:

Petitioner:

Petitioner contends that the subject properties are overvalued. The actual income as reported to the Respondent was overstated due to post assessment date lease renewals.

Respondent:

Respondent contends that the subject properties were properly valued using all three approaches to value. Petitioner’s income approach methodology is flawed.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Ralph Jacobson, owner of R. H. Jacobson & Co., presented the following indicators of value:

	<u>Schedule 069970</u>	<u>Schedule 043085</u>
Market:	\$848,928.00	\$292,891.00
Income:	\$765,360.00	\$367,119.00

2. Mr. Jacobson testified that the subject properties were originally known as WheatRidge Lumber. The properties are zoned C1 and C2, not industrial. One of the properties has a “spill rim” installed as required for the TruGreen lessee, for which they pay a higher lease rate than normal.

3. Based on the market approach, Petitioner's witness presented an indicated value of \$848,928.00 for Schedule #069970, and \$292,891.00 for Schedule #043085.

4. Petitioner's witness presented 2 comparable sales ranging in sales price from \$22.50 to \$30.41 per square foot and in size from 10,000 to 21,375 square feet. There were no adjustments made to the sales, other than an adjustment for excess land made to Sale 3. Petitioner’s purported Sale 2 was actually a listing, not a sale.

5. Petitioner's witness presented an income approach to derive a value of \$765,360.00 for Schedule #069970, and \$367,119.00 for Schedule #043085.

6. Mr. Jacobson believes the 1997 actual rental income is similar to that used by Respondent. He believes that the income reported on page 105 of his exhibit should be decreased; some of the lessees renewed their leases at a higher rate after the level of value date.

7. Petitioner's witness did not present a cost approach value for the subject properties.

8. Petitioner is requesting a 1999 actual value of \$765,360.00 for Schedule #069970, and \$367,119.00 for Schedule #043085.

9. Respondent's witness, Mr. Tom Adams, Chief Appraiser for the Jefferson County Assessor's Office, presented the following indicators of value:

	<u>Schedule 069970</u>	<u>Schedule 043085</u>
Cost:	\$1,039,260.00	\$933,470.00
Income:	\$1,159,500.00	\$531,900.00

10. Respondent's witness did not calculate a value for the subject properties based on the market approach.

11. Respondent's witness presented 22 comparable sales ranging in sales price from \$15.55 to \$75.00 per square foot and in size from 2,520 to 108,920 square feet. No adjustments were made to the sales.

12. Mr. Adams testified that he reviewed all the industrial sales that occurred within the appropriate time frame. The subject properties' assigned value falls within the indicated sales range.

13. Respondent's witness used the income approach to derive a value of \$1,159,500.00 for Schedule #069970, and \$531,900.00 for Schedule #043085.

14. Mr. Adams testified that he used rental rates of \$5.50 and \$2.50 per square foot for Schedule #043085, and \$6.25 per square foot for Schedule #069970. He used a vacancy rate of 5% for both properties. He also used 5% for a management expense. The expenses used were \$0.83 and \$0.25 per square foot for Schedule #043085, and \$0.94 per square foot for Schedule #069970. His capitalization rate was 12%.

15. Mr. Adams testified that page 13 of his exhibit was prepared by Fuller & Company, which shows vacancy rates of 4.78% and rents ranging from \$4.25 to \$9.50 per square foot.

16. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject properties of \$1,039,260.00 for Schedule #069970, and \$933,470.00 for Schedule # 043085.

17. Mr. Adams critiqued Petitioner's income approach. Page 22 of Respondent's Exhibit 2 is a calculation using the actual income of the properties. He believes that Petitioner's witness inappropriately took a vacancy loss in his calculation. A vacancy loss should not be taken when using actual income, as any loss due to vacancy is already accounted for in the actual income received. He has no problem with Petitioner's maintenance, insurance, or office expenses. The income approach value calculation based on actual income and expense is higher than that assigned value.

18. Under cross-examination, Mr. Adams testified that generally a vacancy expense is considered. However, his survey information showed little to no vacancy. The property was valued as it was used: industrial, rather than as zoned: commercial.

19. Upon questioning from the Board, Mr. Adams testified that he relied on the income approach to value, which was supported by the market approach. He gave no weight to the cost approach.

20. Under redirect, Mr. Adams testified that the 1997 property tax expenses used by Petitioner's witness in his income approach were incorrect. The taxes Mr. Jacobson used were the 1997 taxes payable in 1998. The correct taxes would be the 1996 taxes paid in 1997, as taxes are paid in arrears. The same problem exists with his 1998 tax expenses.

21. Respondent assigned an actual value of \$1,159,500.00 to Schedule #069970, and \$531,900.00 to Schedule #043085 for tax year 1999.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 1999 valuation of the subject properties was correct.

2. Petitioner raised the issue of whether the subject properties were properly classified as industrial versus commercial properties. However there was a lack of evidence presented to the Board to determine whether the classification was incorrect. Respondent's witness testified that the property was classified according to its actual use, not zoning.

3. Petitioner did not calculate a cost approach and Respondent's witness testified that he did not rely upon this approach. Therefore, the Board gave little weight to the cost approach.

4. Respondent did not calculate a value according to the market approach. Instead, Respondent chose to study a range of sales and concluded that the assigned value fell within those ranges. However, Respondent made no adjustments to those sales for differences in physical characteristics. One of Petitioner's purported sales was not a sale, but a listing. Petitioner calculated a market approach, but also made no adjustments for physical characteristic differences. The Board believes that adjustments must be made for physical characteristic differences, and supporting documentation should be submitted for these adjustments. A market value conclusion based on unadjusted sales cannot be relied upon to give a truly accurate indication of value for the subject property. Therefore, the Board gave little weight to the market approach as submitted in this appeal by both parties.

5. The Board gave most weight to the income approach. The Board supports the use of actual income and expense information to establish a value for the subject property, but only when that information is shown to be equivalent to typical market data. The Board also believes that it is improper to calculate a value using a mixture of actual and market data; either all actual or all market data should be used.

6. The Board found Petitioner's income value calculation had some methodology and accuracy errors. The Board was persuaded by Respondent's witness that a vacancy deduction should not be taken when using actual income; the Board was convinced that the use of actual income would already account for any vacancy that occurred. Petitioner's deduction for income tax was incorrect, as the taxes were deducted in the wrong expense year. Regardless, when calculating a value for tax purposes according to the income approach, taxes should be included in the capitalization rate and not expensed. Petitioner used a mix of actual and market data, which the Board has already found to be an inappropriate methodology. Therefore, the Board could not rely upon Petitioner's income approach value conclusion.

7. Overall, the Board found both parties' exhibits to be confusing, fragmented, and lacking in some supporting documentation. However, after carefully reviewing all of the testimony and evidence presented by both parties, the Board was most persuaded by Respondent's income approach value. Respondent's use of market income renders Petitioner's claim of inflated actual income due to post assessment date lease renewals irrelevant.

8. The Board affirms the assigned values of \$1,159,500.00 for Schedule #069970, and \$531,900.00 for Schedule #043085 for tax year 1999.

ORDER:

The petition is denied.

APPEAL:

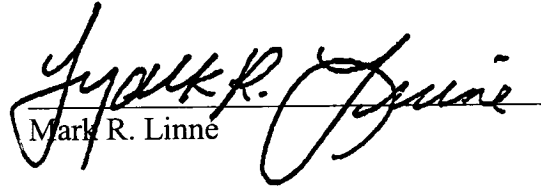
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.


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.

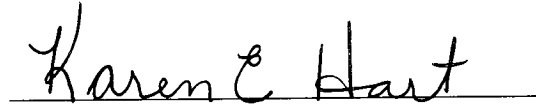
If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 30th day of August, 2001.

BOARD OF ASSESSMENT APPEALS


Mark R. Linne

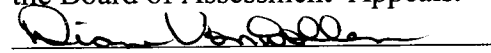

Claudia D. Klein

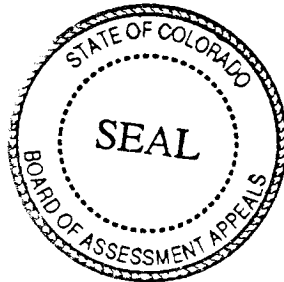

Karen E. Hart

This decision was put on the record

AUG 30 2001

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


Diane Von Dollen



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