

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GILBERT ROMERO,</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: Gilbert Romero Address: 10805 West 44th Avenue Wheat Ridge, Colorado Phone Number: (303) 421-8945 Attorney Reg. No.</p>	<p>Docket Number: 37986</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 4, 2001, Debra A. Baumbach, Karen E. Hart and Mark R. Linné, presiding. Petitioner, Mr. Gilbert Romero, appeared pro se. Respondent was represented by Lily Oeffler, Esq.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**SEC 21 RNG 69 TWN3S
(Jefferson County Schedule No. 043986)**

Petitioner is protesting the 1997, 1998, and 1999 actual value of the subject property, which consists of two buildings, aggregately comprising 2,940 square feet, situated on a site comprising a total of 23,261 square feet, located at 10805 West 44th Avenue, in Wheat Ridge, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the Respondent has overvalued the subject property by not properly considering the impact of a purported encroachment of his property on another, with a legal description and survey that indicate that his property is actually situated in the right-of-way for West 44th Avenue. Additionally, the Petitioner has had difficulty getting an appraisal on the property due to a survey that demonstrates the aforementioned encroachment. The Petitioner believes that the land component is overvalued, and notes that the title on the property does not match the legal description. A quiet title action is in progress.

Respondent:

Respondent contends that the assigned value of the subject property is supported by sales of similar properties, similarly situated, during the appropriate base period. No evidence of the encroachment into the public roadway has been demonstrated, according to an examination of the public record by the Respondent. Accordingly, the Respondent believes the subject property to be appropriately valued.

FINDINGS OF FACT:

1. The Petitioner's brother/partner, Mr. Felix Romero, testified that he had hired a surveyor to survey the subject property, and the results of that survey indicated that the subject encroached on another property. Mr. Romero testified that his deed for the property indicates that the subject is on West 44th Avenue but the property title indicates that the property is 30 feet into the roadway.
2. Mr. Romero testified that they are actually encroaching 30 feet onto the neighbor's land on their northern boundary. He mentioned the concept of adverse possession, and is presently in the process of pursuing a quiet title action.
3. The witness testified that he could not get an appraiser to come out to the property. He has been trying to sell the property, but cannot do that until the quiet title action is completed.
4. The Petitioner did not present an estimate of value.
5. The witness testified under cross-examination that the property was surveyed in 1993. He further testified that his business has not been impacted by any of these issues. He explained that his property presently operates as an auto body shop.
6. The witness testified with respect to the problems with the encroachment. He indicated that Mr. Barnes, the previous owner, advised him about the encroachment. Lawyers were brought into this action. The fence is likely the boundary line of the property.

7. In response to questions from the Board, the witness testified that the problem lies with the rear 30 feet of the property. The title reads that the subject begins in the roadway by 30 feet.

8. The witness further testified that he does not know what the value of his property should be, because he cannot get an appraiser to go to the property to look at the subject.

9. The witness testified that he found out about the encroachment because Mr. Barnes told them they were encroaching on the referenced property. He has owned the property for 23 years. They know they have an encroachment because their lawyer told them so. They were told that all of the properties in this area were off by 30 feet.

10. Respondent's witness, Mr. William Stuhlman, Colorado Certified General Appraiser with the Jefferson County Assessor's Office, testified that the subject was located on West 44th Avenue, and comprised a site with a total of 23,261 square feet. There are two structures on the property; the first is an 840 square foot retail/office building on the front portion of the property. There is also a 2,100 square foot auto shop at the rear of the property. The auto shop was constructed in 1976.

11. Mr. Stuhlman presented an appraisal and testified that he used all three approaches to value, and presented the following indicators of value for the subject property for 1997 and 1998:

Cost:	\$113,820.00
Market:	\$113,000.00 to \$128,000.00
Income:	\$142,600.00

He also presented the following indicators of value for the subject property for 1999:

Cost:	\$160,000.00
Market:	\$143,000.00 to \$158,000.00
Income:	\$157,200.00

12. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$113,820.00 for tax years 1997 and 1998, and \$160,000.00 for tax year 1999.

13. The witness testified that he utilized the cost approach and concluded \$2.85 per square foot for the subject's land value for 1997 and 1998. For the 1999 valuation, the land component increased to \$5.25. In concluding a valuation via the cost approach, a replacement cost was calculated for the buildings, and appropriate depreciation was applied. Based on the change in land values, the 1999 valuation was indicated as \$160,000.00.

14. Based on the market approach, Respondent's witness presented an indicated value range of \$113,000.00 to \$128,000.00 for the subject property for tax years 1997 and 1998, and a range of \$143,000.00 to \$158,000.00 for tax year 1999.

15. In discussing the direct sales comparison or market approach, Mr. Stuhlman testified that he utilized retail sales comparables to value Building #1 and determined an indicated range for 1997 and 1998 of \$50.00 to \$55.00 per square foot, resulting in a value of \$50,000.00 to \$55,000.00. The witness testified that he felt it appropriate to utilize auto service comparable sales for Building #2, with an indicated range of \$30.00 to \$35.00 per square foot resulting in a value of \$63,000.00 to \$73,000.00. Based on the aggregation of both buildings, the witness concluded a value for 1997 and 1998 of \$113,000.000 to \$128,000.00. For the 1999 analysis, the witness concluded from the comparable sales a unit value range of \$70.00 to \$75.00 per square foot for Building #1, resulting in a value of \$59,000.00 to \$63,000.00. The value of Building #2 was determined through a consideration of comparable sales, in which a unit range of \$40.00 to \$45.00 was concluded, resulting in a value of \$84,000.00 to \$95,000.00. Aggregating these values resulted in a value of \$143,000.00 to \$158,000.00.

16. Respondent's witness presented an income approach to derive a 1997 and 1998 value of \$142,600.00, and a 1999 value of \$157,200.00 for the subject property.

17. The witness testified that the income approach begins with a rental survey. Respondent's Exhibit #1 provided the details of the income analysis. The survey included rentals of both retail and auto service uses. For 1997 and 1998, the rental rate concluded for the retail portion of the subject was indicated as \$6.00 per square foot on a gross basis, with a vacancy rate of 10%. For the auto service portion of the subject, a rental rate of \$7.00 per square foot was concluded, with a vacancy rate of 5%. Total expenses applied were \$2,814.00. A capitalization rate of 11% was applied to the income stream, resulting in a value of \$142,600.00. For the 1999 valuation, a rental rate of \$7.25 for the retail portion and \$7.50 for the auto service component was concluded. A 10% vacancy rate was applied to the income from the retail space and a 5% vacancy rate was applied to the auto service space. Total expenses of \$3,150.00 were applied, and an 11% capitalization rate was utilized, resulting in a value of \$157,200.00.

18. After considering all three approaches to value, the witness testified that he concluded a value for the subject of \$113,820.00 for 1997 and 1998, with \$66,290.00 allocated to the land and \$47,530.00 allocated to the improvements. The witness further testified that he concluded a value of \$160,000.00 for 1999, with \$122,120.00 allocated to the land and \$37,880.00 to the improvements.

19. Mr. Stuhlman testified that the Petitioner informed him that 30 feet was in dispute at the rear of the property. He asked someone in his office to look at the property records, and in so doing, found a deed which described the subject as having 23,400 square feet, which is very close to the 23,360 square feet that the assessor's records indicate as the site size.

20. Members of the assessor's staff looked at the deed and determined that the property does not encroach on 44th Avenue, based on this staff review. There may very well be problems on the north portion of the property.

21. Mr. Stuhlman testified that \$139,540.00 was the original value assigned to the subject for tax year 1998. After the abatement hearing, the property condition description was changed from average to fair. A review by his office was performed, resulting in the lower value of \$113,820.00.

22. The witness testified that he used the cost approach because the subject was a difficult parcel to value. In 1999 the value assigned to the property was \$169,080.00. After a review was performed, a concluded value of \$160,000.00 was accorded to the property.

23. The witness testified that the biggest difference between the 1997/1998 values and the 1999 values was the change in the land value. The land value increased from \$2.85 per square foot to \$5.25 per square foot.

24. Mr. Stuhlman testified that the value for 1999 relied on a blended value from all three approaches to value. Land value has little impact on the concluded value.

25. Under cross-examination, the witness testified that even if the city or the county knew about the street encroachment, and even if they had previously asked for quitclaim deeds along the street, it would still be a local zoning issue for the City of Wheat Ridge.

26. The witness further testified that any quitclaim deed filed would be filed in their office. The square foot being shown is that from the records in the assessor's office, which are based on the deeds that were filed.

27. Respondent assigned an actual value of \$113,820.00 to the subject property for tax years 1997 and 1998, and \$169,080.00 for tax year 1999. However, Respondent is now recommending a reduction to \$160,000.00 for tax year 1999.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 1998. Respondent further presented testimony and evidence reducing the 1999 actual value to \$160,000.00.

2. The Board notes that, although reference was made to tax year 1997 throughout the hearing, it lacks jurisdiction to consider that tax year. Evidence presented indicated that the Jefferson County Board of Commissioners did not accept jurisdiction for tax year 1997, as the original abatement petition was not timely filed. We concur.

3. Though testimony was offered with respect to a perceived encroachment, either to the rear subject property line or to the potential public right of way of the subject, there was no documentation offered by the Petitioner that would serve to corroborate this assertion. Additionally, the Petitioner admitted under questioning that there was no actual impact on the business that he runs from the subject property. Accordingly, the Board concludes that without evidence of either the encroachment or some impact on the subject property's utility or underlying value, no adjustment in this regard is appropriate. Any valuation adjustment due to the encroachment would be speculative.

4. The Respondent provided market-derived evidence via the cost, direct sales comparison and income approaches, that the concluded valuation was appropriate and supported. A concluded value of \$113,820.00 for 1998 and a concluded value for 1999 of \$160,000.00 appear to conform to the market-derived data.

5. The Respondent appeared to have made a good faith effort to properly classify the subject's physical condition, and has adjusted the condition from average to fair. Additionally, the Respondent has examined the encroachment issues with members of his staff, including an examination of the deed under which the Petitioner acquired the property. This analysis has failed to indicate that the current information in the Respondent's property characteristic database is incorrect.

6. After due consideration of the approaches to value presented by the Respondent and the data presented by the Petitioner, the concluded value of \$113,820.00 for 1998 and \$160,000.00 for 1999 appear to accurately reflect the value of the subject property for each of the applicable assessment periods. We affirm Respondent's presented values.

ORDER:

Regarding tax year 1998, the petition is denied.

Regarding tax year 1999, Respondent is ordered to reduce the value to \$160,000.00, with \$122,120.00 allocated to the land and \$37,880.00 to the improvements.

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 or 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 17th day of July, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Debra A. Baumbach
Debra A. Baumbach

Mark R. Linné
Mark R. Linné

This decision was put on the record

JUL 17 2001

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

Diane Von Dollen
Diane Von Dollen

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