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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THOMAS J. HILL,</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: Ronald E. Sandstrom Address: 11540 W. 69th Way Arvada, Colorado 80004 Phone Number: (303) 424-0683</p> | <p>Docket Number: 40115</p> |
| <p style="text-align: center;">ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on May 22, 2003, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Ronald C. Sandstrom. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**5890 Lamar Street, Arvada, Colorado
(Jefferson County Schedule No. 003792)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1999 and 2000. The subject property consists of a 4,014 square foot industrial warehouse situated on a 33,541 square foot site, located at 5890 Lamar Street in Arvada, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property is contaminated and requires cleanup. Respondent did not adequately consider the loss in value due to the contamination. There are no sales similar to the subject to allow the use of the market approach in the valuation of the subject property. Respondent did not properly follow the Division of Property Taxation (DPT) guidelines.

Respondent:

Respondent contends that the subject property is correctly valued. The assigned value reflects a deduction of all remediation costs, including those costs not yet realized. The property must be valued as it existed on January 1, 1999 and January 1, 2000. There is no documented evidence of contamination; no environmental studies have been submitted.

FINDINGS OF FACT:

1. Petitioner, Mr. Thomas J. Hill, testified that he has owned the property since 1982. The Colorado Oil and Gas Section and the EPA have contacted him regarding contamination of the property. There are chlorinated solvents and hydrocarbons in the soil. The estimated cost for cleanup is \$160,000.00. As of June 30, 1998, he had removed the underground tanks and the concrete and dispensers at the front of the property.

2. The cleanup costs for 1998 are shown on page B5 of Petitioner's Exhibit A. The above ground removal cost of the cleanup done in 1999 is shown on page B6. The cost shown on page B7 was for cleanup subsequent to 1998. The tanks have been removed and the soil has been cleaned but there is still more work to do; the work was done in 1999 and 2000. There are still chlorinated solvents and hydrocarbons in the soil. The contamination has affected the potential sale of his property.

3. In cross-examination, Mr. Hill testified that he did not know of the contamination at the time of his purchase. There was some surface contamination at the time of purchase, but there were no requirements for Phase I or Phase II studies at that time. In 1998 they removed four underground tanks and concrete for a total cost of \$27,045.42; the estimate had been \$37,853.00. In 1999, the remediation costs were \$14,170.95; the estimate had been \$33,054.00. The 1999 remediation was for the removal of the storage tanks and the disconnecting of piping and pumps. The 2000 costs were \$10,572.98; the estimate was \$67,388.00.

4. The property is currently leased to AJC Car Sales, who had occupied the property for about 18 months prior to January 2002. AJC did not exercise its option to purchase the property due to the contamination issue. Mile Hydraulics, Mr. Steve Frost, leased the building in 1998 and 1999. He has not given a copy of his environmental report to Respondent.

5. In redirect, Mr. Hill testified that the 1999 actual cleanup costs were incurred under his supervision, which cost less than what an outside company would have charged. Some of the tanks were removed in 2000 and 2001. The cleanup is not yet complete. Dow Chemical is responsible for the solvent cleanup. The remaining hydrocarbon cleanup of the soil is assumed to be somewhere around a seven-foot depth, which is near the water table. The water table is carrying the chlorinated solvents.

6. Upon questioning by the Board, Mr. Hill testified that there were six above ground tanks (ASTs) along the office warehouse building that were not yet removed as of January 1, 2000 and the soil removal from under the above ground tanks was completed after 2000.

7. Petitioner's witness, Mr. Ronald Sandstrom, Agent, presented the following indicators of value:

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|---------|----------------|
| Market: | Not Applicable |
| Cost: | \$22,920.00 |
| Income: | \$ 7,003.00 |

8. Mr. Ronald Sandstrom testified that he prepared a restricted valuation data report as of June 30, 1998. He has assigned an overall value of \$7,000.00. His photos were taken in 1998, prior to the removal of any of the tanks. The property is located in the Ralston Creek flood plain and is in the Twins Inn contamination plume.

9. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$22,920.00.

10. Mr. Sandstrom testified that the land value without impairment would be \$67,080.00 at \$2.00 per square foot. The depreciated value of the improvements using Marshall & Swift is \$69,870.00 for a total value without impairment of \$136,950.00. The estimated cure time is 3 years, which was used to calculate a current cost to cure of \$114,030.00, for a value after impairment of \$22,920.00.

11. Petitioner's witness presented an income approach to derive a value of \$7,003.00 for the subject property.

12. Mr. Sandstrom testified that he used the Jefferson County Assessor's study rent at \$4.50 per square foot for a value of \$113,442.00. He also calculated an income approach using the subject property's actual income and expenses for a value of \$121,033.00. He then deducted the environmental cleanup costs for a remaining value of \$7,003.00.

13. Based on the market approach, Petitioner's witness calculated an indicated value for the subject property, but determined it was not relevant.

14. Mr. Sandstrom testified that he arrived at an unimpaired value of \$37.00 per square foot, or \$148,518.00, less the site cleanup costs, for an adjusted value of \$34,388.00. He spoke with a bank in the area regarding a loan for the purpose of purchasing the subject property. They would only loan 65% of the value of the property if it were shown to be uncontaminated by the State of Colorado. He feels the market approach is not relevant.

15. Mr. Sandstrom reconciled the value to \$7,000.00, based on the income approach.

16. Mr. Sandstrom testified that the property was vacant during 1997 and the first half of 1998 and was not usable during that time. The cleanup cost estimates were based on the work being done by an outside firm. He made no adjustment between the two tax years, as the 1999 cleanup cost difference was insignificant.

17. Under cross-examination, Mr. Sandstrom testified that he has not provided copies of the environmental studies to Respondent. The use of the estimated costs is appropriate according to his conversations with DPT staff. Respondent's value is based on the income approach with the deduction of the actual costs shown in Respondent's Exhibit 2. Some of the ASTs and some of the dirt had not yet been removed until after January 1, 2000. Respondent took off the actual costs from the full value. As of June 30, 1998, all that was available was the estimates and the actual cost of the removal of the underground tanks (USTs), which did not include Mr. Hill's supervisory costs; no overhead or profit was charged due to Mr. Hill's supervision rather than an outside firm.

18. Under redirect, Mr. Sandstrom testified that only one portion of the four parts of the cleanup costs was known as of June 30, 1998; the remaining costs were not known. He took the estimated cleanup costs and followed the DPT guidelines to establish the cleanup deduction. The second part of the cleanup, involving the ASTs, was not completed as of January 1, 2000.

19. Upon questioning by the Board, Mr. Sandstrom testified that the four parts of the cleanup are: 1) the removal of USTs; 2) the removal of ASTs; 3) the soil removal, and 4) the environmental assessment and reporting.

20. Petitioner is requesting a 1999 and 2000 actual value of \$7,000.00 for the subject property.

21. Respondent's witness, Ms. Brenda L. Fearn, a Certified General appraiser with the Jefferson County Assessor's Office, presented the following indicators of value, before adjustment for impairment:

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|---------|--------------|
| Market: | \$161,600.00 |
| Cost: | \$151,340.00 |
| Income: | \$139,170.00 |

22. Ms. Fearn has inspected the property. It is 0.77 acres with a two-story industrial metal/block-constructed building built in 1970 and 1982, and a secondary metal structure. There is a railroad track on the northern border. Petitioner owns another site approximately 300 feet from the subject.

23. Ms. Fearn testified that she valued the subject property as if unimpaired, using all three approaches to value. At the bottom of Page 9 of Respondent's Exhibit 1, she has her calculation of the reduced value for contamination, which she applied only to the land value; no contamination to the building has occurred. She spoke with the EPA and other agencies. There was a petroleum release in 1994 and the file was closed in 2001. The underground tanks were removed in 1998. The Thoro Products contamination may be dissipating naturally.

24. Based on the market approach, Respondent's witness presented an indicated value of \$161,600.00 for the subject property.

25. Respondent's witness presented three comparable sales ranging in sales price from \$35.43 to \$39.29 per square foot and in size from 5,080 to 10,420 square feet. After adjustments were made, the sales ranged from \$36.71 to \$41.67 per square foot, before adjustment for excess land.

26. Ms. Fearn testified that she reviewed sales based on their location to the subject, their actual use and their potential use. She concluded to both a value before land adjustment and a value after adjustment for excess land.

27. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$151,340.00.

28. Ms. Fearn testified that the land was valued at \$2.00 per square foot. She made a slight square footage correction due to a field inspection. The total cost approach value as if unimpaired is \$151,340.00. She did not give much consideration to the cost approach due to the age of the improvements.

29. Respondent's witness used the income approach to derive a value of \$139,170.00 for the subject property.

30. Ms. Fearn testified that she selected a rental rate of \$5.50 per square foot. She has not received a copy of the actual lease for the subject property. There is no loss in value of use of the property. She used a capitalization rate of 12%. Using actual income, she calculated a value of \$136,000.00. She noted that the subject property has a larger than usual lot.

31. Ms. Fearn testified that she reconciled her value with the most weight given to the market approach. She concluded to an unimpaired value of \$160,000.00.

32. Ms. Fearn testified that she believes the contamination issue is merely speculation. The market is not reflecting a difference in income for impaired versus unimpaired properties within the Twins Inn contamination plume. However, she did present a valuation based on impairment as follows:

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|---------------|--------------|
| Tax Year 1999 | \$132,955.00 |
| Tax Year 2000 | \$145,829.00 |

33. Ms. Fearn testified that she followed the DPT guidelines in valuing the subject property. For tax year 1999, she extracted the 1998 actual expenses. For tax year 2000, she deducted the 1999 actual expenses. The Jefferson County hearing officer improperly deducted all of the costs for all of the years and applied them to every tax year; the assigned value is therefore incorrectly calculated.

34. Under cross-examination, Ms. Fearn testified that she has no documentation to prove that the subject property is contaminated. She made no deductions for the estimated post-tax year costs. The assessor's office makes an adjustment only in the year following actual costs expended for cleanup. She gave very, very little consideration to the cost approach, gave little consideration to the income approach, and gave almost all her consideration to the market approach. She used a rent rate of \$5.50 per square foot rather than the \$4.50 in the chart because the subject has a larger than normal site size and may have a higher income potential. None of her comparable sales were contaminated properties.

35. Respondent assigned an actual value of \$84,800.00 to the subject property for tax years 1999 and 2000.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax years 1999 and 2000 valuations of the subject property were correct.

2. The Board was not convinced that the market value as presented in this case should be given weight to value the subject property, as sales of properties that have documented contamination were not presented for use to value the subject and Petitioner's witness gave no weight to this approach. There is insufficient evidence to determine whether potential contamination has had a negative effect on property values within the Twins Inn contamination plume.

3. The Board also gave little weight to the cost approach. Petitioner's calculated value after contamination deductions appeared to be unreasonably low, even if contamination is an influence on value, when compared to the income approach valuation calculation. The Board agrees with Respondent that the cost approach should be given little weight due to the age of the improvements, the configuration of the subject property, and the difficulty of determining an adjustment for contamination, if necessary.

4. The Board determined that the income approach was the best approach to use in valuing the subject property, as the income should reflect the affect of any contamination on the property's ability to produce income. Petitioner submitted an unimpaired income approach value of \$121,033.00 based on actual income. Respondent's income approach value based on market rents was \$138,300.00. The primary difference in the two value conclusions appears to be primarily in the gross rent per square foot. Petitioner believes that the market rent used by Respondent is incorrect as it is a higher rental rate than shown in the assessor's income model. Petitioner's actual rental rate is similar to the median rental rate in the assessor's model. The Board was convinced that Petitioner's unimpaired income approach, based on actual property rental data, is more appropriate at \$121,033.00.

5. The Board was presented with conflicting views as to the cleanup costs and the way they should be applied if applicable. The Board has reviewed the DPT procedures.

6. According to the Environmental Property Appraisal Course workshop materials, Respondent's Exhibit 1, sub-exhibit B, taxpayer is to provide evidence of contamination of their property, show that the incident was reported to an appropriate health agency, etcetera, and provide data to indicate the status of a proposed or ongoing cleanup plan. Taxpayer is to submit to the assessor, as support for a reduction in value, a list of available comparable sales similarly impaired, pertinent information concerning the cleanup, and records of income and expenses necessary to allow the assessor to estimate the value of the real property as impaired and as if unimpaired by the income approach. The assessor completes a physical inspection to note obvious evidence of a hazard or risk, as well as surrounding properties for similar adverse property characteristics. The burden of proof of contamination and support of a potential reduction in value due to the contamination lies with the taxpayer.

7. For the subject property, Petitioner has admitted that he has not given copies of his environmental reports to the assessor. Petitioner has furnished cleanup cost estimates and actual costs for the cleanup of surface contamination unrelated to the Twin Inns contamination plume, although Respondent's witness could find no record of an open contamination incident for the subject property filed with the proper agencies. Respondent has admitted that the subject property is located in the Twin Inns contamination plume, but disputes that the subject property has suffered a value loss. Respondent questioned whether all of the cleanup costs submitted by Petitioner were due to contamination or were performed for other reasons.

8. The Board recognizes that costs have been incurred to cleanup the subject property. However, Petitioner has failed to produce environmental reports as support that the entire cleanup costs were due to environmental contamination of the surface. Respondent could find no outstanding surface contamination incidents filed with the appropriate agencies and has found no evidence of diminished value of properties located in the Twins Inn contamination plume. Petitioner's actual income stream is consistent with market income data and does not appear to be affected by any potential contamination issues. The value of the subject property at \$121,033.00 as calculated using the actual income is higher than the assigned value of \$84,800.00.

9. After careful consideration of all the evidence and testimony presented, the Board finds that Petitioner has not met his burden of proof regarding a negative affect of any potential contamination on the value of the subject property and denies any further reduction in the assigned value for tax years 1999 and 2000.

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.

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

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 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, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 25th day of June, 2003.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

JUN 25 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

