

<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>FLEMINGS RESTAURANT,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 69111</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 30, 2017, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by William E. Sparks, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2016 actual value of the subject property.

Subject property is described as follows:

**Personal Property  
Located at Flemings Restaurant  
191 Inverness Drive W. Englewood., Colorado  
Arapahoe County Schedule No. 034571973**

The subject of this appeal is personal property used in the operation of Flemings Restaurant, which includes typical restaurant equipment such as stoves, ovens, refrigerators, grills, fryers, point of sale (POS) equipment, furniture, and computer equipment.

Petitioner is requesting an actual value of \$139,324 for the subject property for tax year 2016. Respondent assigned a value of \$195,941 for the subject property for tax year 2016 and presented an appraisal reflecting a value of \$202,370 (including previously omitted property valued at \$6,429).

Petitioner’s case centers on the statutory requirement that “[p]hysical, functional, and economic obsolescence shall be considered in determining actual value.” Section 39-1-104 (12.3)(a)(II), C.R.S. Petitioner contends that the Assessor did not consider economic conditions in

accordance with Colorado law, and that the Division of Property Taxation (DPT) tables do not accurately account for market value and only estimate remaining economic life.

Petitioner's witness, Ms. Tammy Blackburn, Accredited Senior Appraiser (ASA), Machinery and Technical Specialties with For What It's Worth Appraisals, Inc. presented a Supermarket Valuation Model for tax year 2016. Although applied to supermarket equipment, Ms. Blackburn testified the same equipment was representative of the subject's assets. The model was developed to calculate Market Value (aka, "just value", "actual value") to measure total depreciation, including physical depreciation, functional obsolescence and economic obsolescence using data from the retail, which is considered a secondary market for equipment. Identified as "the percent of cost" method, Ms. Blackburn measured a ratio of selling price on the secondary market to the cost of the same asset as new. Freight was considered for consistency in development of the ratios. Two sources of data were considered: sales and offerings of used equipment and dealer interviews. The collected data was classified into Normal Useful Life (NUL) categories based on similarities in asset characteristics and behavior in the secondary market. The ratios were then used to calculate total depreciation by category, which was then used to determine the Percent Remaining Value (PRV).

Ms. Blackburn testified that restaurant assets sold nationally, and that she relied on interviews with Colorado dealers to measure depreciation for the region. Although the data points used were post-January 1, 2016, she determined that there was no change in market conditions that required an adjustment between 2015 and 2016. Her results, which are summarized in Exhibit 4, Page 00117, were reportedly used as a "crosscheck" by Petitioner's witness, Mr. Jack E. West, ASA with Property Valuation and Consulting, Inc. in preparation of a cost analysis. Ms. Blackburn prepared the model and testified on an hourly-fee basis.

Petitioner's second witness, Mr. West, testified that he had prepared his report and was testifying at an hourly rate, with no contingency fee involved. He also indicated that the market for restaurant equipment was national, especially in the restaurant industry, which has one of the highest industry failure rates. Mr. West calculated replacement cost new (RCN) of \$831,668 by multiplying the historical cost of items by index provided in the Division of Property Taxation (DPT) tables. Mr. West presented examples illustrating that depreciation based on the age-life method does not adequately account for total obsolescence of an item (using the example of immediate depreciation of cars purchased new).

To determine economic depreciation for restaurant equipment, Mr. West relied on interviews and site visits with restaurant equipment dealers located in Florida, Georgia, and Kansas. In Mr. West's analysis, dealer surveys from 2003 through 2006 were summarized to indicate average depreciation of 55% in the initial year of ownership (locations unknown). Twenty-two examples of 2015 sales of new versus used restaurant equipment, identified by search of the internet, were presented to support the extent of economic obsolescence. These sources were used to determine additional deductions for obsolescence compared to the tables used by the assessor. After applying the percentage good that was indicated by the difference between the DPT Percent Good Table and the remaining obsolescence factor (ROF), total actual value was concluded as \$139,324.

Respondent's witness, Mr. Michael Krueger, Property Tax Specialist II with the Division of Property Taxation, described the process used to value personal property in Colorado, including the consideration of the Iowa State University property retirement and depreciation study, which is used to determine depreciation. He admitted that the DPT personal property tables do not recognize economic obsolescence. He cited ARL, Vol. 5, page 4.4 that states that: "Additional functional/technological and/or economic obsolescence may also exist. If reasonably documented and proven to exist, additional functional and/or economic obsolescence must be measured in the marketplace either using the market approach or rent loss methods." Mr. Krueger testified that other possible sources of support for measuring obsolescence might be market studies, economic indicators, or the institution of restrictive legislation.

Respondent's witness, Mr. David Newcomer, Appraiser with the Arapahoe County Assessor's Office, presented an Appraisal Report supporting an increase in value to \$202,370 based on the addition of previously omitted property. To complete the appraisal, Mr. Newcomer physically inspected the subject property, reviewed the detailed asset list provided by Petitioner, estimated replacement cost new, determined accrued depreciation using the DPT Taxation tables and considered extraordinary physical deterioration, functional obsolescence and economic obsolescence. He noted that freight and installation costs were to be recognized as part of the valuation process. Although all three approaches to value were reportedly considered, only the cost approach was applied based on the data availability.

Mr. Newcomer's report included a discussion of economic and industry conditions affecting Colorado, noting projected sales for 2016 of over \$10 billion from approximately 11,200 properties. On a local level, the report cites significant population growth in the Metro Denver area, with an increase in sales of 4.9% in the 12 months prior to April 2015. Mr. Newcomer's findings were supported by Exhibit C, Colorado Business Economic Outlook 2016 by Colorado University's School of Business, which indicated growth of 8% in restaurant sales in 2014, with "restaurants in Northern Colorado, the Denver Metro area, and Boulder areas" leading growth.

Respondent's calculation of value indicated total cost of \$676,966, to which an indexing cost factor was applied to indicate replacement cost new (RCN) of \$812,098.64. The depreciated replacement cost new was derived by use of the percent good factor provided in ARL, Vol. 5, Addendum 4-D. To accurately reflect the level of value as of June 30, 2014, a Level of Value (LOV) factor was applied based on industry category. The resulting value was \$202,370. Mr. Newcomer testified that consideration had been given to potential economic obsolescence, but that there was insufficient evidence that any further deduction was required. He cited the general strength of the Denver market, including Arapahoe County.

Respondent contends that the Assessor properly followed the DPT's outlined steps in Respondent's valuation of the subject property. Respondent argued that although the statute requires consideration of additional economic obsolescence, there is no requirement to apply unsupported deductions.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2016. Although Ms. Blackburn presented a detailed

model addressing obsolescence, the focus of her research and analysis was supermarket equipment, with most of the data derived from the Florida and Georgia markets. Of the 24 dealers surveyed by Ms. Blackburn, only 4 were from the Colorado market, and only 2 appeared to produce data used in her analysis. This included one self-contained cooler, gondola shelving that had reached the end of its economic life, and a large point of sale (POS) system. Petitioner failed to demonstrate the applicability of this data to the subject, a restaurant located in the suburban Denver area. While Ms. Blackburn's report supported an adjustment for supermarket equipment located in the Southeast region of the U.S., it did not support the higher adjustment applied by Mr. West to the subject's restaurant equipment in Colorado.

In fact, there was even less support for Mr. West's adjustment for economic obsolescence. His analysis was supported by interviews with dealers from three states; Florida, Georgia, and Kansas. There was no indication that the internet sales data was derived from any sales from the Colorado market. Petitioner provided no support for the contention that the Colorado market reflected the national market, Florida, or Georgia markets, that Arapahoe County restaurants were facing economic downturn or failing, or that there was any restrictive legislation that had been put in place to reduce the value of the subject property.

Based on a review of testimony and exhibits, the Assessor correctly applied the steps outlined in the ARL Vol. 5, Chapter 4 to value the subject's personal property, acknowledging the requirement by statute to consider the existence of an additional deduction for economic obsolescence. While an additional deduction for economic obsolescence must be and was considered by the Assessor, Petitioner failed to convince the Board that such additional deduction was necessary or appropriate under the facts presented.

Petitioner presented insufficient probative evidence to convince the Board that Respondent's valuation of the subject property for 2016 tax year is incorrect.

## **ORDER:**

The petition is denied.

## **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).

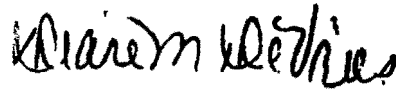
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 13th day of June, 2017.

**BOARD OF ASSESSMENT APPEALS**

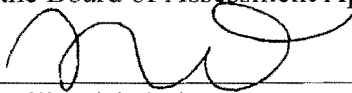


Diane M. DeVries



Sondra Mercier

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



Milla Lishchuk

