

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>AERONAUTICAL SYS CORP (ASC),</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Edward R. Byrne, Esq. Address: 2338 Broadway, Suite 300 Boulder, Colorado 80304-4107 Phone Number: (303) 447-2555 E-mail: Attorney Reg. No.: 11786</p>	<p>Docket Number: 39990</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 22, 2002, Judge Nuechter and Karen E. Hart presiding. Petitioner represented by Edward R. Byrne, Esq. Respondent was represented by Robert Gunning, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Boulder County ID 0122998 and 0123001

Petitioner is protesting the 2001 actual value of the subject properties, possessory interests in two aircraft hangars located at the Boulder Municipal Airport.

ISSUES:

Petitioner:

Petitioner contends that the subject properties have been overvalued. Respondent has failed to deduct certain expenses that relate to common areas.

Respondent:

Respondent contends that the subject property has been correctly valued using the income approach. Petitioner's requested expense deductions are not allowed under Colorado Revised Statutes or the Division of Property Taxation guidelines, which are binding on all assessors.

FINDINGS OF FACT:

1. The Petition was amended to remove the name of Coonts Aviation. Petitioner, Aeronautical Sys Corp (ASC) is the owner of both properties under appeal.

2. The Board incorporated the record from Docket #39993 into this docket, including opening statements, witness testimony, exhibits, and closing arguments. The Board also admitted additional exhibits, marked as Respondent's exhibits six and seven.

3. Regarding schedule number 0122998, Respondent assigned an actual value of \$51,000.00 to the subject property for tax year 2001. The subject property was initially valued based on a long-term lease. Respondent is now recommending a reduction in actual value to \$6,600.00, based on information indicating that the subject property is actually leased on a month-to-month basis. Petitioner agreed to stipulate to the reduced amount.

4. Regarding schedule number 0123001, Respondent assigned an actual value of \$38,600.00 to the subject property for tax year 2001. Respondent is recommending a reduction in value to \$36,600.00. Petitioner is requesting an actual value of \$6,975.00.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject properties were incorrectly valued for tax year 2001.

2. Both parties reached a stipulation regarding schedule number 0122998. The Board accepts the stipulation. The value of the remaining schedule number 0123001 is still in dispute and the Board reaches the following conclusions for schedule number 0123001.

3. The Board was given three separate and diverse views of the subject property and its expense allocations. Mr. Grundy was of the opinion that all of the rent monies were to cover

airport expenses. Mr. Forsythe testified that he believes the rent monies are net market rates. Respondent characterizes the lease as gross, and Mr. Lee believes 87.5% of the lease monies are expended by the City for excludable expenses.

4. Colorado Revised Statutes 39-1-103-(17)(II)(A) states in part "...The rents or fees used to determine the actual value of a possessory interest under the cost or income approach to appraisal shall be the actual contract rents or fees reasonably expected to be paid to the owner of the underlying real or personal property unless it is shown that the actual contract rents or fees to be paid for the possessory interest being valued are not representative of the market rents or fees paid for that type of real or personal property, in which case the market rents or fees shall be substituted for the actual contract rents or fees."

5. C.R.S. 39-1-103(17)(II)(B) states in part "...The rents or fees taken into account... shall exclude that portion of the rents and fees required to be paid for all rights other than the exclusive right to use and possess the land, improvements, or personal property. Such rents or fees to be excluded shall include, but shall not be limited to, any portion of such rents or fees attributable to any of the following: Nonexclusive rights to use and possess public property, such as roads, rights-of-way, easements, and common areas; ... and reimbursement to the owner of the underlying real or personal property of the reasonable costs of operating, maintaining, and repairing the land, improvements, or personal property to which the possessory interest pertain, regardless of whether such costs are separately stated, provided that the types of such costs can be identified with reasonable certainty from the documents granting the possessory interest...."

6. Accordingly, the Board believes there are two separate issues to be determined in this case:

- Is the lease rate for the subject property market rent?
- Are costs included in the lease rate that are for the reimbursement of costs as defined in the above statute?

7. It is not disputed that the subject property lease rents are market rents. What is disputed is whether the lease rents are net or gross of expenses.

8. The lease clearly states the lessee is responsible for all utility costs on the leased premises, as well as removal of snow and ice and other maintenance of the grounds. Section 20 C states that "Coonts Aviation shall maintain the building at its own expense so that it remains in good condition, ordinary wear and tear excepted." Section 20 B states in part "The City shall also maintain all municipal utilities, roads, taxiways and runways serving the Premises and the Airport." Section 23 states in part "If any real estate or personal property tax shall be assessed by any governmental agency against the property, the Coonts Aviation shall be responsible for and promptly pay such tax."

9. After review of the lease and testimony presented, the Board determines that the provisions of the lease are typical of those found in net leases. According to the ARL Volume 3, Page 7.87, "When net payments and fees are made by the possessory interest holder, no income exclusion is necessary". The Board finds this directive to be consistent with the statute, and

further finds that there was no evidence of qualifying reimbursable expenses paid by the Petitioner that should be excluded from the income analysis as performed by Respondent.

10. The Board was not persuaded that how the City spends the lease monies is relevant to the value of the subject property. The primary consideration is whether there are qualified reimbursable expenses, and the Board found no evidence to support any such expenses. In fact, the lease indicates that the City, not the Petitioner, is responsible for the expenses of the common areas, such as roads, runways and major taxiways serving the Premises and the Airport.

11. The Board affirms Respondent's valuation methodology as presented in this case. The Board accepts Respondent's recommended value of \$36,600.00 for schedule number 123001 and the stipulated value of \$6,600.00 for schedule number 0122998.

ORDER:

With respect to schedule number 0123001, Respondent is ordered to reduce the 2001 actual value of the subject property to the recommended reduced value of \$36,600.00.

With respect to schedule number 0122998, Respondent is ordered to reduce the 2001 actual value of the subject property to the stipulated value of \$6,600.00.

The Boulder County Assessor is directed to change her records accordingly.

APPEAL:

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

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.