

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 47866,
47867, 47868, 47869,
47870, 47871, 47872,
47873, 47874, 47875, &
47876.**

Petitioner:

POUDRE VALLEY HEALTH CARE INC.,

v.

Respondent:

PROPERTY TAX ADMINISTRATOR.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 23, 2008, Sondra W. Mercier, James R. Meurer, and Lyle D. Hansen presiding. Petitioner was represented by David L. Wood, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent's denial of property tax exemption for tax years 2004, 2005, and 2006 for the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

2121 East Harmony Road, Fort Collins, CO

Docket No.	Description	Larimer County Schedule No.
47866	Suite 360, 361	1598275
47867	Suite 125	1598253
47868	Suite 300	1598270
47869	Suite 160	1598258
47870	Suite 330 (vacant)	1598273
47871	Utility Closet	1598276
47872	Utility Closet	1598271
47873	Utility Closet	1598256
47874	Suite 230 (vacant)	1598264
47875	Suite 135	1598255
47876	Suite 200, 250	1598265

The petitions cover eleven applications made by Petitioner to Respondent for exemption of property owned and used for strictly charitable purposes by a licensed Colorado health care facility. The subject properties consist of eight commercial condominium units and three utility closets situated within the Harmony Valley Condominiums complex. The parties agreed that Respondent not separately assess the utility closets as they are common elements of the building; the parties agreed to remove the three docket numbers from the April 23, 2008 hearing.

Petitioner is a non-profit corporation, licensed by the State of Colorado as a General Hospital which operates satellite facilities as departments of the hospital.

Petitioner contends that the eight leased condominium units are entitled to a real property tax exemption for tax years 2004, 2005, and 2006 because the property was owned and used in pursuit of Petitioner's charitable purposes. Petitioner contends that Respondent erred by determining that the tenants who have leased condominium units from Petitioner do not have a possessory interest.

Respondent contends that the subject properties are not entitled to a real property tax exemption for tax years 2004, 2005, and 2006 because the subject property was used for a non-qualifying purpose. Respondent contends that Petitioner leases the eight condominium units to tenants that used the individual properties for profit.

Petitioner did not present sufficient probative evidence and testimony to prove that the leased commercial units of the subject properties meet the qualifications for real property tax exemptions for tax years 2004, 2005, and 2006 in their entirety. In order for the subject properties to qualify for tax exempt status as a licensed health care facility, the property must be "owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit." *See* C.R.S. § 39-3-108(1)(b).

A taxpayer seeking a charitable tax exemption for the taxpayer's real property, which is used by individuals or organizations other than the taxpayer, must show that use of the property meets the qualifications for a charitable tax exemption. This requires that the property not be owned or used for private or corporate gain or profit. C.R.S. § 39-3-116.

Petitioner has not shown that the leased commercial condominiums are not used for private gain or corporate profit. Petitioner admits that the eight units were leased "to tenants whose use of the property is for profit." Petitioner's Memorandum in Support of its Petition pg. 3. Therefore, the leased commercial condominiums are not entitled to tax-exempt status.

Petitioner contends that they should not be taxed on the subject units because the lessees hold possessory interests. In support thereof, Petitioner cites C.R.S. § 39-1-107(4) which states that "[t]he property tax on a possessory interest in real or personal property that is exempt from taxation under this article shall be assessed to the holder of the possessory interest" Petitioner also cites *Board of County Commissioners, County of Eagle v. Vail Associates, Inc.*, 19 P.3d 1263 (Colo. 2001) in which the Colorado Supreme Court opined that the taxation of a possessory interest in tax-exempt property is permitted under the general provisions of Colorado's tax code. According to the Colorado Supreme Court, "for taxation to occur, the possessory interest in tax-exempt property must exhibit

significant incidents of private ownership that distinguish it from the *underlying tax-exempt ownership.*” *Vail Associates*, 19 P.3d at 1279 (*emphasis added*).

Petitioner has not shown that the use of leased condominiums was not for private gain or corporate profit. Accordingly, under C.R.S. § § 39-3-116 and 39-3-108, the Board finds the underlying interest in the real property is not exempt from property tax. Since the underlying property is not exempt from taxation, the possessory interest statute is not applicable.

Petitioner presented sufficient probative evidence and testimony to prove that the vacant commercial condominiums meet the qualifications for real property tax exemption for that portion of the tax years they were vacant. After consideration of the testimony and evidence presented, the Board agrees that the vacant units were available for storage as part of the operation of that health care facility. The units did not generate any type of profit, and were used for strictly charitable purposes.

ORDER:

The petitions for Docket Nos. 47866, 47867, 47868, 47869, 47875, & 47876 are denied.

The subject properties under Docket Nos. 47870 & 47874 meet the qualifications for a real property tax exemption for portions of tax years 2005 and 2006, from July 1, 2005 through October 19, 2006. The Property Tax Administrator is directed to change her records accordingly.

As stipulated by the parties, Respondent will not separately assess the subject properties under Docket Nos. 47871, 47872, & 47873, and those petitions are withdrawn.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of C.R.S. § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

C.R.S. § 39-2-117(6) (2008).

DATED and MAILED this 14th day of July 2008.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

James R. Meurer

James R. Meurer

Lyle D. Hansen

Lyle D. Hansen

This decision was put on the record

JUL 14 2008

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

Heather Heinlein

Heather Heinlein

