

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>8451 PEARL STREET LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 56124</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 15, 2011, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Timothy J. O'Neill, Esq. Respondent was represented by Doug Edelstein, Esq. Petitioner is protesting the classification of the skilled nursing facility portion of the subject property for tax year 2010.

During the hearing, Petitioner stipulated to the actual value of \$5,081,734.00 assigned by Respondent to the larger subject property that includes the skilled nursing facility. Therefore, Petitioner's protest of the classification of a portion of the larger property would affect only the total assessed value.

Subject property is described as follows:

**8451 Pearl Street, Thornton, Colorado
Adams County Parcel No. 01719-27-1-17-004**

The property at issue in this appeal is a portion of a larger mixed-use medical facility identified by the Adams County schedule number cited. The larger facility includes the Vibra Hospital, a 54-bed Long Term Acute Care Hospital, the 39-bed Haven Behavioral Senior Care psychiatric section, and the 25-bed Vista View Care Center (Vista View) skilled nursing facility. The focus of this classification appeal is the Vista View skilled nursing facility that consists of approximately 19,500 square feet of the larger facility.

Petitioner contends that the Vista View skilled nursing facility qualifies for residential classification because it is licensed by the State of Colorado as a Long Term Care Facility and functions as a nursing home with a higher level of care. Petitioner cited the Assessor's Reference

Library (ARL) as support for the residential classification. The ARL states that “[w]hen a residential use exists within a commercial property, the residential use must be classified as residential and assessed at the prevailing residential assessment rate [. . .].” ARL, Vol. 2, p. 6.25.

Petitioner presented testimony by Mr. John Adams, Administrator for Vista View. The witness testified that Vista View encompasses approximately 19,500 square feet of the overall facility. Vista View is a separate legal entity from the other uses in the facility and has separate staffing, a separate admissions process, and separate regulatory requirements. The witness testified that Vibra Hospital, Haven Behavioral Senior Care, and Vista View are each separately licensed. Vista View, in addition to being separately licensed by the State of Colorado as a Long Term Care Facility, is one of only two facilities in Colorado that is a Medicaid certified facility for the Hospital Backup Program (HBU), a long term care benefit program for people who require a higher level of skilled medical care than traditional nursing homes can provide. Because the necessary care is long term, they cannot stay in a traditional hospital facility. HBU clients/patients must be qualified through a Medicaid application process. Mr. Adams testified that Vista View has clients who have lived there for multiple years, including some who have lived there since 2002, and are not expected to be discharged to return to a home setting. In the four years he has been employed by Vista View, only one client has been discharged to return home. Clients direct their own daily activities. Vista View has a staff person who organizes activities both within the facility as well as away from the property to the extent that clients are able to participate. As a result of Medicaid rate negotiations resulting in delays for a new HBU contract, Vista View has also accepted clients in the last few years needing skilled nursing care for shorter periods than the HBU residents, in order to remain financially viable. However, Mr. Adams testified that the primary use of the facility is for long term care clients.

Petitioner presented testimony by Mr. Tim Anderson, a real estate consultant employed by Property Valuation Services. The witness presented a revised allocation of Respondent's actual value for the larger property, assigning 16.58% of the land and improvement value to Vista View. The witness calculated the percentage attributable to Vista View using a square footage area figure of 19,500 and a total square footage for the facility of 117,588. Both square footage figures were provided by Petitioner. The witness presented a revised assessed value for the larger property applying the 7.96% residential assessment ratio to the portion allocated to Vista View and the 29.00% commercial assessment ratio to the remainder. The witness testified that this calculation resulted in a revised total assessed value for the larger property of \$1,296,393.00.

Petitioner is requesting that the classification of the Vista View portion of the larger facility be changed to residential for tax year 2010 which would result in a revised assessed value of \$1,296,393.00 for the larger subject property.

Respondent contends that Vista View is a hospital and does not qualify for residential classification. Respondent presented testimony by Mr. Edward Hermann, a Certified General Appraiser employed by the Adams County Assessor's Office. The witness testified that the primary classification for Vista View is as a convalescent hospital, based on the description of use and occupancy defined by Marshall and Swift, a state-approved cost estimating service used by the witness in the valuation of the larger facility by the cost approach. The witness testified that

Petitioner was asked to provide a rent roll or other evidence of tenant leases to support the claim of residential use, but the witness was told there are no such leases for Vista View. The witness testified that he knows little about the different uses within the larger facility and thinks it is all a hospital as evidenced by the presence of medical staff and medical equipment including, but not limited to, oxygen lines in every room. The witness estimated the square footage occupied by Vista View at a lower figure of 8,800 square feet, but that it is a rough estimate. He was unable to measure all of the space because of HIPPA restrictions.

Mr. Vern Penton, a Certified General Appraiser employed by the Adams County Assessor's Office also testified for Respondent. The witness testified that Vista View does not qualify as a nursing home because it does not have tenant leases, nursing homes do not have the medical equipment and staff provided at Vista View, and nursing homes typically have larger rooms. Nursing home tenants have the ability to choose where they live and have no other home to return to. The witness testified that the level of medical service provided at Vista View is typical of a hospital, not a nursing home. The witness testified that he is not familiar with the HBU long term care program.

Respondent requested that the current commercial classification applied to the Vista View portion of the larger subject property be affirmed.

Petitioner presented sufficient probative evidence and testimony to prove that the Vista View portion of the larger subject property qualifies for residential classification for tax year 2010.

In reaching a conclusion, the Board relies on the following definitions:

“Long-term care” means those services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive, and maintenance services for individuals who have chronic physical or mental impairments, or both, in a variety of institutional and noninstitutional settings, including the home, with the goal of promoting the optimum level of physical, social, and psychological functioning of the individuals. Section 25.5-6-104(2)(h), C.R.S.

“Nursing home facility” means a facility which provides skilled nursing home services or intermediate care nursing home services. Section 25-1-1002 (1) C.R.S.

Multi-Units (9 Units and Up) Land Code: 1125 Imp. Code: 1225

Land and structures designed as residential dwellings which have nine or more living units are classified under this subclass. Apartments, row-houses, dormitories, boarding houses, and nursing or rest homes are typical multi-unit dwellings. ARL VOL. 2, page 6.22.

The Board concludes that the Vista View portion of the larger subject property functions as a skilled nursing long-term care facility duly licensed for that purpose by the state. The Board finds that like a more traditional nursing home, patients reside at the facility for extended, indefinite periods and that many do not return to an independent home living situation. Though most of the residents at Vista View have met the Medicaid application qualifications for this facility, in part,

because they require a higher level of skilled nursing than can be given to them in a traditional nursing home, the patients maintain self-directed daily activities and have rights similar to residents in a nursing home facility. The Board finds no statutory or ARL support for Respondent's claim that Vista View cannot be considered a nursing home because it does not have tenant leases, and because it has more medical staff and equipment than a traditional nursing home providing a lower level of medical supervision.

The Board has relied on the Vista View area figure of 19,500 square feet. Though Petitioner's witnesses were not able to cite the source of that figure, Respondent's witness, Mr. Hermann, testified that during his inspection of the property, he was not certain what part of the larger facility was encompassed by Vista View and was not able to measure all of the Vista View space because of HIPPA restrictions. Therefore, he had to estimate the square footage. For those reasons, the Board finds Respondent's square footage figure for Vista View less credible. The Board concludes that the 19,500 square foot Vista View portion of the larger subject property qualifies for residential classification for tax year 2010.

The Board finds that Petitioner has stipulated to Respondent's assigned value of \$5,081,734.00 for the larger subject property. Based on this stipulated value, the Board concludes to an actual value of \$842,551.00 for the portion of the property to be classified as residential and \$4,239,183.00 for the remaining portion of the property classified as commercial.

ORDER:

Respondent is ordered to change the classification of the 19,500 square foot Vista View portion of the subject property to residential. Based on the stipulation of the parties of a total actual value of \$5,081,734.00, Respondent is ordered to allocate \$4,239,183.00 of the actual value of the subject property based on a commercial classification and \$842,551.00 of the actual value of the subject property based on residential classification.

The Adams County Assessor is directed to change his/her records accordingly.

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-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 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-five days after

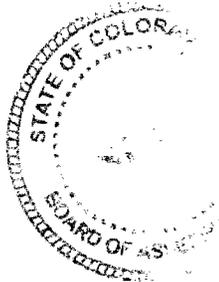
the date of the service of the final order entered).

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 4th day of October, 2011.



BOARD OF ASSESSMENT APPEALS:

Debra A. Baumbach
Debra A. Baumbach

Louesa Maricle
Louesa Maricle

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

Milla Crichton
Milla Crichton