

<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>CHERIE MULLER,</b></p> <p>v.</p> <p>Respondent :</p> <p><b>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 64146</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on October 24, 2014, Louesa Maricle and Debra A. Baumbach presiding. Mr. Gary Muller appeared on behalf of Petitioner. Respondent was represented by Rebecca Klymkowsky, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2011.

Subject property is described as follows:

**30746 Bryant Drive, Unit 313  
Evergreen, Colorado  
Jefferson County Schedule No's 441792, 441793, 441794, 441795 &  
441796**

The subject property is an office/warehouse condominium unit that is part of The Evergreen Artisan Park Condominiums, located in the commercial core of the town of Evergreen, Colorado. The condominium building was constructed in 2002 and contains three floors. The first two levels are subdivided into 32 condominium units similar to the subject, with the third level split into mini-storage units. Each condo unit is approximately 1,000 square feet of office/warehouse area. The building is classified as a class D structure, with wood and steel framing including wood composite exterior siding constructed on a reinforced concrete foundation. The site area consists of 301,233 square feet and is the common area for the condominium association which includes access, driveways, pavement and landscaping features.

The subject is a single level unit located on the first floor containing 1,000 gross square feet which includes a warehouse space, office and a bathroom. The subject is zoned PD

(Planned Development Zone District) which allows for a variety of uses based on approval of an official development plan.

### **Schedules 441792, 441793, 441794, 441795**

On or about March 24, 2014, Respondent filed a Motion to Dismiss arguing that Petitioner's abatement petition for tax year 2011 regarding schedule numbers 441792, 441793, 441794, and 441795 should be dismissed pursuant to Section 39-10-114 (1)(a)(I)(D), C.R.S., which states, "No abatement or refund of taxes shall be made based upon overvaluation of property if an objection or protest to such valuation has been made and a notice of determination was mailed..."

In this case, Petitioner's predecessor in interest, Mr. Iannacone, filed a protest for tax years 2011 for schedule numbers 441792, 441793, 441794 and 441795 with the Jefferson County Assessor. Respondent presented evidence at the hearing that the Assessor's Office issued Notices of Determination on August 16, 2011. Neither Petitioner, nor Petitioner's predecessor in interest pursued a further appeal at the County Board of Equalization level. It does not appear that schedule number 441796 was protested with the Assessor; therefore, that schedule is not a subject to the Motion to Dismiss.

Because the valuations of the subject properties have already been protested with the Assessor and notices of determination have been issued, Petitioner is precluded from petitioning the Board for abatement on the basis of overvaluation. *See* Section 39-10-114 (1)(a)(I)(D), C.R.S. During the hearing Petitioner presented testimony to the Board indicating that Petitioner's abatement appeal was based on the grounds of overvaluation. Therefore, pursuant to Section 39-10-114 (1)(a)(I)(D), C.R.S., Petitioner is precluded from pursuing an abatement appeal before the BAA pertaining to the schedule numbers 441792, 441793, 441794 and 441795. *See* Section 39-10-114 (1)(a)(I)(D), C.R.S.

### **Schedule 441796**

On the Petition, Petitioner requested an actual value of \$42,240 for the subject property for tax year 2011; at the hearing, however, Petitioner indicated that he would accept \$65,000 for the subject property for tax year 2011. Respondent assigned a value of \$123,070 for tax year 2011.

Petitioner's witness, Mr. Gary Muller, testified that the subject property is a part of a commercial condominium development facilitating ownership in warehouse/office incubator space for small businesses. Mr. Muller testified that in his efforts to attract potential buyers, Petitioner offered to finance purchases with zero down payments, amortized 30-year loans with five-year balloon payments. As a result, Mr. Muller testified that the majority of the units in the complex were almost 100% leveraged with high amount of foreclosures and deeds in lieu of foreclosures.

Mr. Muller testified that the subject unit was acquired through a deed in lieu of foreclosure in June of 2012. Petitioner did not present a market approach because of the

immense financial leveraging of the units. According to Mr. Muller, a market approach did not represent market perceptions and was not a viable valuation method for the subject.

Mr. Muller presented a value of \$64,610 based on the cost approach. Mr. Muller did not present any discussion as to the methodology used in deriving the value via the cost approach.

Mr. Muller testified that the income approach was the most appropriate method to value the subject property. Petitioner's witness presented a value of \$42,020 based on the income approach. Petitioner's witness relied on an income approach that was dated August 26, 2013 and was previously prepared by Petitioner for the purposes of the Jefferson County Board of Commissioners' hearing. Mr. Muller referred the Board to pages 7, 8 and 9 in Petitioner's Exhibit 1 outlining income and expense reports that included nine units in the complex dated July 1, 2011 through June 30, 2012. Petitioner used the allocated rental income of \$4,372.14 based on the total gross income of \$30,167.78 prior to deductions for expenses. Petitioner used a 10.4% cap rate used by Respondent in Respondent's report for a concluded value of \$42,040.

Respondent's witness, Mr. Randall K. Brenimer, a Certified General Appraiser at the Jefferson County Assessor's Office, gave consideration to the market, cost and income approaches to value the subject property giving most consideration to the market approach. Respondent presented three comparable sales ranging in sales price from \$90,000 to \$130,000 and in size from 820 to 1,000 square feet. After adjustments were made for differences in age, size, quality and condition the sales ranged from \$128,222 to \$147,641.

Mr. Brenimer testified that he was able to find three sales of similar single tenant office/warehouse condominiums that sold within the 24-month extended statutory base period. All three sales were market arm's-length transactions. Mr. Brenimer gave most weight to Sale 1 located within the subject's complex which required only one adjustment for age difference. Sale 2 is located in a nearby competing industrial complex and Sale 3 is located in the Golden market area requiring nominal adjustments ranging in net adjustments from 1.9% to 6.8%. Mr. Brenimer reconciled to a value of \$128,000 for the subject property.

Petitioner presented insufficient probative evidence and testimony to prove that the subject's valuation for tax year 2011 was incorrect.

The burden of proof is on Petitioner to show that Respondent's valuation is incorrect. *Board of Assessment Appeals v. Sampson*, 105 P.2d 198, 201 (Colo. 2005). After careful consideration of the testimony and exhibits at the hearing, the Board finds that Petitioner did not meet that burden. The Board is not persuaded that Petitioner's income analysis provides a reliable value conclusion. Petitioner's analysis includes the average income and expenses from multiple units that had been foreclosed upon and rented out in the complex. Based on averages, an allocation of income was made for the subject unit. Petitioner did not present the Board with market data from the market area supporting that the income and expenses used in the analysis represent typical market rents and expenses for similar properties.

The Board finds that the market approach is the most reliable method to value the subject property. Respondent's comparable sales and adjustments made to the sales most accurately

reflect market value for the subject property. The sales used by Respondent were all single tenant office/warehouse condominium units and were representative of the market. Respondent's adjustments for differences affecting the value were minimal and reasonable. Notably, the Board gave most consideration to Respondent's Sale 1 that is located in the subject's complex and is considered the most similar to the subject in location, size, style, market appeal and required only one adjustment for age difference. The Board also notes that Sale 1 had third party financing, so was not affected by favorable financing offered by Petitioner.

**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 25th day of November, 2014.

**BOARD OF ASSESSMENT APPEALS**



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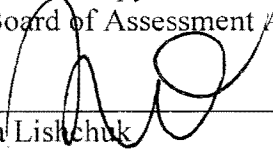
Louesa Maricle

Debra A. Baumbach

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Debra A. Baumbach

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

  
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Milla Liskchuk

