BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69741
Petitioner: **SUSAN F. PINKOWITZ,** v. Respondent: **DENVER COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on July 20, 2017, Louesa Maricle and Gregg Near presiding. Petitioner appeared *pro se*. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the classification of the subject property for tax year 2015.

Subject property is described as follows:

2445 South Monroe Street
Denver, Colorado 80210
Denver County Schedule No. 05254-10-023-000

The Board admitted Petitioner's Exhibits 1 through 12 and Respondent's Exhibit A.

The subject of this appeal is the classification of 2445 South Monroe Street, Denver, Colorado, 80210. In 2013, Petitioner purchased two parcels identified by Denver County Schedule Nos.: 05254-10-016-000 and 05254-10-017-000 and demolished the existing "scrape off" improvements per permit issued on July 25, 2014. Petitioner combined the two parcels in 2015 to create the new parcel, 05254-10-023-000, now identified as 2445 South Monroe Street. Construction plans for the new residence were filed with the Denver County Building Department on October 7, 2014 and the permit for new construction was issued on December 22, 2015. Per Petitioner, excavation and shoring for the new foundation began on January 6, 2016.

As there were no residential improvements on the subject as of January 1, 2015 Assessment date, the property was re-classified as non-residential for the 2015 tax year.

Petitioner stated the delays in construction that ultimately led to the re-classification of the subject property resulted from no fault of her own but were caused by the City and County of Denver. Petitioner presented a "Construction/Permitting Timeline" detailing the steps that were taken between January 2014, when a builder was hired, and the issuance of the Building Permit on December 22, 2014. According to Petitioner the builder, Squibb Estates, was hired in January 2014 and indicated a plan to break ground for the new construction in August/September of 2014. In April, Mr. Jack Nolan of Denver Development Services informed Petitioner that a building permit could not be issued until the lot combination process was completed and the existing improvements demolished. In June, Petitioner allowed Habitat for Humanity to remove any valuable materials from the then-existing improvements as a donation.

The Denver Zoning Department approved a zone lot amendment on July 19, 2014. Petitioner stated a contractor hired to remove asbestos from the improvements completed that process in mid-July. Demolition of the existing improvements was completed on August 6, 2014. Petitioner indicated a new survey was required before the lot combination would be allowed. On September 9, 2014 Petitioner obtained an approval for the zone lot amendment which was then recorded on October 3, 2014. Two business days later, Petitioner submitted plans for the building permit. From the submittal date of October 7, 2014 it took until December 1, 2014 before the Planner began the initial review and the permit was then issued on December 22, 2014. On the same date the builder, Squibb Estates, informed Petitioner that due to weather the site was too muddy to drill for the support piers and the next available date was December 30, 2014. Petitioner's contractor provided a letter on August 1, 2016 stating his familiarity with the timing to dig and pour a foundation and opining that if the Building Department had reviewed the plan within a reasonable time, a foundation could have been poured by January 1, 2015.

Respondent's witness Mr. Richard C. Armstrong, a Certified Residential Appraiser, testified regarding the processes the Assessor undertakes in redevelopment areas where rising prices result in removal of older, less valuable, improvements to construct a new home. The subject was classified as vacant, non-residential, because the residence(s) had been removed. Mr. Armstrong described the requirement that the property, in order to retain its original residential classification, must have at least a completed foundation in place as of the assessment date. Mr. Armstrong, in response to direct questioning, indicated that the Assessor, in the past, had a level of flexibility to adjust values due to unintended consequences such as those described by Petitioner. That discretion is no longer allowed and, in fact, the Assessor had previously been admonished by the Department of Property Taxation for use of the discretionary process. The witness also pointed to the language in the Assessors' Reference Library (ARL) that specifically provides direction to the Assessor in cases of fully destroyed properties.

Petitioner contends the City and County of Denver caused the delays that resulted in the re-classification of the property to vacant land. Ms. Pinkowitz referenced "Denver's Building Plan Review Times: What to Expect," where the City, in the second quarter of 2016, provided estimated review times by plan type. For new home projects, the Target Initial Review Time was estimated to be 4 weeks but the Current Initial Review Times (2nd Quarter 2016) were 6 weeks. According to Petitioner, it took 11 weeks from the time plans were submitted for a building permit (October 7, 2014) to the issuance of a building permit (December 22, 2014). Petitioner's own research of other

counties indicated plan approval and issuance of building permits were generally completed within one month. According to Petitioner, she followed the letter of the law and had no intent to create vacant land. Petitioner argues that despite Ms. Pinkowitz' best efforts, the City's delay resulted in an $11,000 tax increase that is unfair. Petitioner requested the BAA correct the inequity and to reclassify the property back to residential.

Respondent stated it was clear Petitioner's intent was to build a new home. There is also no question there was delay within the process but comparing Denver to other counties is unfair as the City has a larger number of properties and other counties do not face the same volumes.

The Board understands the timing of the improvement's demolition and the delay caused by the lengthy approval process were the likely cause for the property to remain vacant as of January 1. However, the Board is bound by the statutory requirement that the property be classified according to its use and condition as of January 1 assessment date. *See e.g.*, Section 39-1-105, C.R.S.

For property tax purposes, classification is based on the use and characteristics of the property as of January 1 of the tax year, the assessment date. *Padgett v. Routt Cnty. Bd. of Equalization*, 857 P.2d 565 (Colo. App. 1993) ("Section 39-1-105, C.R.S. requires property be assessed based on its condition and use as of noon on January 1 of the tax year."); *see* Section 39-1-105, C.R.S. (establishing January 1 as the assessment date); *Johnston v. Park County Cnty. Bd. of Equalization*, 979 P.2d 578, 581 (Colo. App. 1999) ("we note that classification is based on the use and characteristics of the property as of the assessment date, i.e., January 1, of the tax year").

In addition, the ARL specifically provides that, at minimum, a residential foundation must be in place as of the January 1st assessment date for a parcel to qualify for residential classification:

> To meet the "dwelling unit" minimum requirement set out by the Constitution for a property to be classified as residential, a completed structural foundation for a residential improvement must be in place on January 1. See ARL, Vol. 2 at page 6.9.

Moreover, the ARL specifically provides that when previously-existing structures are removed and no new structures exist on the assessment date, vacant classification is appropriate:

> Structures that were fully destroyed prior to January 1 of the current year are removed from the current assessment roll, and if no other structures exist on the parcel, the land is reclassified as vacant for the current assessment year. unless the destroyed structure was a residential improvement destroyed by natural causes. See ARL, Vol. 2 at page 6.9.

The Property Tax Administrator's interpretation of statutes pertaining to property taxation is entitled to judicial deference as the issue comes within the administrative agency's expertise. *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 16-22 (Colo. 1996) ("Judicial deference is appropriate when the statute before the court is subject to different reasonable interpretations and the issue comes within the administrative agency's special expertise.") Moreover, the procedures

contained in the ARL promulgated by the Property Tax Administrator pursuant to Section 39-2-109(1)(e), C.R.S. are binding upon county assessors. *Huddleston*, 913 P.2d 15, 16-22.

The Board finds that because the previously-existing structures were demolished in 2014 and no residential improvements existed on the subject on the January 1, 2015 assessment date, the subject did not meet the qualification for residential classification for 2015 tax year. Therefore, the Board finds that Assessor appropriately applied the Colorado statutes and followed the ARL's directives in classifying the subject as non-residential for the 2015 tax year.

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 16th day of August, 2017.

BOARD OF ASSESSMENT APPEALS

Louesa Maricle

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

Milla Lishchuk

Gregg Near

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS