

<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>ELMS HAVEN THORNTON LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ADAMS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 73888</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 25, 2018, Diane DeVries and MaryKay Kelley presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by Meredith Van Horn, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The Board admitted Petitioner’s Exhibits 1 and 3 and Respondent’s Exhibits A and B.

Subject property is described as follows:

**12080 Bellaire Way, Thornton, Colorado  
Adams County Schedule No. R0106321**

The subject is a convalescent hospital and short-term rehabilitation care center licensed for 242 patients of which 182 are for convalescent hospital nursing care and 60 for rehabilitation. It was built in 1987 with additions in 1989, 1996, and 2007 for a total of 87,007 square feet.

Respondent assigned an actual value of \$21,780,000 for tax year 2017, which was supported by an appraised value of \$30,500,000. Petitioner is requesting a value of \$16,800,240.

Petitioner’s witness, Josh McCollum, presented an analysis of three properties that were presented by the Assessor at the BOE level of appeal. While he agreed with the adjustments for market conditions and age, he also adjusted for personal property (actual data from the Assessor’s web site), Medicaid bed licenses (\$20,000 per bed based on experience), and business value (included in the sale price), all of which, in his opinion, should be included in market value in

addition to the real estate. Considering price per bed the best indicator of value and placing greatest weight on Sale One with an adjusted value of \$69,422 per bed, he concluded to a value of \$16,800,242 for the subject property.

On questioning, Mr. McCollum testified that he neither inspected the subject property nor independently researched the above-mentioned three sales nor verified information from the Assessor's web site with buyers and sellers.

Respondent's witness, Jacquelyn L. Headley, Certified Residential Appraiser for the Adams County Assessor's Office, presented a Sales Comparison Analysis with five comparable sales. After adjustments for age and quality/condition, she concluded to a value of \$30,500,000 rounded based on the mean of the adjusted sales. She declined to use a per-bed valuation for two reasons; some beds are in single, double, or three-bed rooms, skewing the analysis, and the wide range (\$21,459,117 to \$62,222,089) suggests a per-bed analysis is not an appropriate measure.

Ms. Headley inspected the subject property. In her opinion, valuation addresses the real estate only; going concern or business value is not at issue. The subject property was operated by Genesis Andromeda, and, in her opinion, management (operators/providers for the facility) is typically in place in care facilities and can adjust to any type of care (long and short-term nursing care, memory care, rehabilitation, palliative care, assisted living, for example). Also, private versus Medicaid beds do not affect value. She disagreed with Petitioner's adjustments.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented in the hearing, the Board concludes that Petitioner failed to meet this burden. Respondent's comparable sales and adjustments to the sales accurately reflect the market value for the subject properties.

The Board notes Respondent's argument that the credibility of Petitioner's witness, Mr. McCollum, was impacted because the company, of which he is Commercial Director, was paid on a contingency fee basis. Taking into consideration the nature of Mr. McCollum's compensation, the Board views the valuation submitted to be part of a consulting service, not an independent appraisal. In its analysis of this case, the Board has weighed the evidence provided by Mr. McCollum in light of the potential bias of a contingency fee arrangement.

The Board does not find Mr. McCollum a credible witness. He failed to inspect the subject property. He is not licensed as an appraiser in Colorado or elsewhere. He failed to research ad valorem taxation or Colorado's statutes or case law. He did not independently research his website-acquired comparable sales. He was unable to support any of his adjustments.

**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.

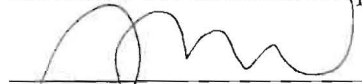
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

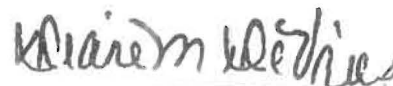
**DATED and MAILED** this 29<sup>th</sup> day of October, 2018.

**BOARD OF ASSESSMENT APPEALS**

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



Milla Lishchuk



Diane M. DeVries



MaryKay Kelley