

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DEBORAH RATCLIFF TRENT LIVING TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 75683</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 4, 2019, Diane M. DeVries and Louesa Maricle presiding. Ms. Deborah Ratcliff Trent and Mr. James Michael Sebben appeared pro se on behalf of Petitioner. Respondent was represented by Katherine M. Parker, Esq. Petitioner is protesting the 2019 actual value of the subject property.

Petitioner's Exhibits 1 and 2 and Respondent's Exhibit A were admitted into evidence. Petitioner stipulated to the admission of Respondent's witness, Andrea Fontana, as an ad valorem appraisal expert for the purpose of this hearing.

Subject property is described as follows:

**632 Main Street, Minturn, CO 81645
Eagle County Schedule No. R045206**

The subject property is Unit 632 in the 28-unit Enclave on Eagle River condominium community (Enclave). The subject property is a first floor, 1,716 square foot condominium unit with three bedrooms, two and one-half bathrooms, and a one-car garage. According to the assessor's records, the actual year built was 1996 and the effective year built is 2010 to reflect significant interior remodeling.

Petitioner is requesting an actual value of \$591,590 for the subject property for tax year 2019. Respondent assigned a value of \$701,170 for the subject property for tax year 2019 but is recommending a reduction to \$658,260.

At the start of the hearing, Respondent explained that in the course of preparing for this hearing, the assessor's appraiser discovered the unit square footages for the subject and two other units in the Enclave community, used as comparable sales, were incorrect in the mass appraisal analysis. The square footages were corrected, and valuation analysis was revised, resulting in a reduction in value from the original mass appraisal value of \$701,170 to \$658,260. Respondent's appraisal prepared for the hearing was also revised. Petitioner was notified of the error and the revised valuation was provided prior to the hearing.

PETITIONER'S EVIDENCE

Ms. Deborah Ratcliff Trent and her husband, Mr. James Michael Sebben, testified on behalf of Petitioner. Petitioner made an equalization argument claiming the assessor's value per square foot for the subject is higher than the appraised values for the other 27 units in the community. The 2019 value for the subject unit is 11.27% higher than the assigned value for the 2017 and 2018 tax years although the average increase for the other 27 units in the Enclave increased an average of only 9% over the previous assessment.

Petitioner claims the sale of the subject property and two other units in the Enclave during the base period (Respondent's Sales 1, 2 and 4) are invalid sale comparables because Respondent's property records showed incorrect unit sizes when those units sold. As a result, Ms. Ratcliff Trent claims she overpaid for the subject property based on erroneous square footage information and, thus, has been overtaxed. Similarly, the buyers of the two other sales in the Enclave did not pay the proper prices. Petitioner contends Sales 1 and 2 had been remodeled, as evidenced by building permit dollar amount information posted on the assessor's website. Petitioner did not provide the actual building permits. Petitioner claims all three sales must be disqualified. Petitioner contends because Respondent's Sale 3 appears to be in the commercial area of Minturn and is situated on top of commercial space. It is also a larger unit than the subject. Therefore, it would have a higher value than the Enclave units, so is not a valid comparable to use.

Petitioner further claims that subsequent to the purchase of the subject unit, the Enclave owners have discovered the condominium buildings have major deferred maintenance issues that are requiring owners to pay special assessments to cure. The deferred maintenance includes the need to replace roofs, mitigate white and black mold, and repair deterioration of the building stucco type siding material. Had Petitioner known that, it would not have paid the same price when the subject was purchased in May 2018. Petitioner claims Respondent has not reduced the value to reflect the deferred maintenance. In response to questions from Respondent and the Board, Ms. Trent testified that as of the January 1, 2019 assessment date, the HOA board, of which she is a member, was aware there was deferred roof maintenance, but was not aware of the extent of the needed repairs. Ms. Trent submitted the Eagle River Enclave Association statement summary for the subject unit for July 1, 2018 through January 1, 2019 showing a special operating assessment charge for \$2,000 on August 24, 2018, and a quarterly special assessment in the amount \$5,000 for initial funding of roof reconstruction. The first building in the community was not examined by outside experts until October or November 2018. Additional repair/restoration needs and costs were identified during 2019. Ms. Trent testified she did not provide documentation regarding repair costs to Respondent because that was not her responsibility.

Considering the \$147,000 per unit restoration and renovation work required to the Enclave property; the unit size error shown in the assessor's records, which caused significant overpayment in Petitioner's purchase price of the subject unit as well as taxes for nearly 25 years; the lower sale prices of the two Enclave comparables before the deferred maintenance costs were known; and the fact that the actual value of the subject unit is higher than any other unit in the Enclave, Petitioner is requesting the value of the subject property be left unchanged from the 2017 and 2018 assessment period and requested a value of \$591,590.

RESPONDENT'S EVIDENCE

Respondent's original assigned value for the subject property, based on the mass appraisal market approach, was \$701,170. The revised mass appraisal value using the corrected unit square footage is \$658,260. At hearing, Respondent presented a value of \$755,360 for the subject in a property specific appraisal based on the market approach.

Respondent presented Ms. Andrea Fontana as witness. Ms. Fontana is an appraiser trainee employed by the Eagle County assessor's office. The witness presented a property specific appraisal of the subject property that she prepared under the supervision of Kevin Cassidy, a Certified Residential Appraiser licensed by the State of Colorado. Four comparable sales were presented including the May 2018 sale of the subject property to Petitioner, sales of two other units in the same condominium community as the subject, and the sale of a condominium unit 0.2 of a mile away in Minturn. The comparable sales presented ranged in price from \$570,000 to \$815,000 and in size from 1,716 to 1,882 square feet. The sale prices per square foot ranged from \$316.32 to \$474.94. All sold within the 13-month statutory base period used for tax years 2019 and 2020. The subject property sold near the end of the base period in May 2018 for \$815,000 and \$474.94 per square foot.

Regarding the issue of revisions made to unit sizes for the Enclave units, the witness testified the recorded plat map unit sizes were used for the subject property and Sales 1 and 2 in both the revised mass appraisal analysis and in her property specific appraisal presented at hearing. Most unit values went down in the Enclave community because of the size changes. The witness contends that Minturn has a small number of condominiums and that base period sales of units within the town are the best comparables.

The witness testified she relied on interior photos of the subject unit published with the MLS listing before the 2018 sale. An interior inspection of the unit was requested but was not granted by Petitioner. From the MLS photos, it was evident that the unit had been significantly remodeled. The witness testified she also investigated Petitioner's claim that Sales 1 and 2 in the Enclave had also been remodeled based on building permit information on the assessor's website but found the permits themselves referenced roof replacement, not interior unit upgrades. Therefore, in her opinion, because the subject had been remodeled prior to the 2018 sale, Sales 1 and 2 were in inferior condition relative to the subject unit.

The witness testified that Sale 3 is about one-quarter mile from the subject property and despite Petitioner's claim that the location of that condominium in a mixed-use commercial development increases the value of that unit, the commercial development and uses are not high-

profile and she found no evidence to support a significant difference in value for its proximity to the commercial uses. It was also inferior in quality of construction and condition relative to Sale 3.

In response to questions from the parties and the Board, the witness testified she did not adjust the value of the subject property for the estimated cost of needed capital improvements discussed by Petitioner. Based on the limited information provided to the assessor's office by Petitioner, it appeared that the roof repairs were normal wear and tear, not atypical deferred maintenance.

After market adjustments to the comparable sales, the indicated values ranged from \$634,290 to \$815,000. Ms. Fontana testified she gave most weight to the values indicated by the sale of the subject and the other two units in the Enclave and concluded to a value for the subject property of \$755,360.

Respondent assigned an actual value of \$701,170 to the subject property for tax year 2019 but is recommending a reduction to \$658,260.

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

BOARD'S FINDINGS AND CONCLUSIONS

Sufficient probative evidence and testimony was presented to prove the value for the subject property should be set at Respondent's recommended value.

The Board can only consider an equalization argument as support for the value of the subject property, once the subject property's value has been established using a market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997).

Petitioner used an equalization argument as one basis to support Petitioner's requested value of \$591,590, the same value assigned by the assessor to the subject property for the previous assessment period (tax years 2017 and 2018). Petitioner presented evidence of what was believed to be remodeling costs for other Enclave units to show condition similarities to the subject unit. That cost information was obtained from the assessor's website references to building permit dollar amounts. However, Respondent's witness testified that her investigation into those building permits showed they were for roof repair/replacement costs for condominium buildings at the property and did not represent interior renovation costs for individual units. The Board finds that testimony more credible. Further, evidence was not presented that each of the other Enclave units was correctly

valued. The Board heard evidence from Respondent's witness that she discovered the square footages shown in the assessor's property records for the Enclave units did not match the unit sizes shown on the recorded plat map. For that reason, the witness testified the values for all the Enclave units were revised to reflect the unit size corrections. The Board finds that Respondent was required to value real estate for the 2019-2020 assessment period using market sales occurring during a different base period than used for the 2017-2018 tax years. Although there can be some overlap in sales, simply comparing actual values from an earlier assessment period to the current assessment period does not accurately reflect the changes in the residential market and market sales analysis methodology Respondent is required to use. Also, simply comparing average values per square foot for other units in the community to the subject unit does not account for physical differences between the individual units and the Board concludes it is insufficient analysis. After considering all of this evidence, the Board gave little weight to the equalization argument presented by Petitioner.

The Board finds Petitioner presented no evidence that the buyers of Sales 1 and 2 paid unreasonable prices, relying on the incorrect unit sizes shown on the assessor's records. Ms. Trent testified that she believed there was an appraisal of the subject property completed as part of the due diligence investigation prior to the closing of the sale but she did not have a copy of the report. The Board finds there was insufficient evidence presented to support Petitioner's claim that the purchase price of the subject unit was improper because the assessor's records showed a unit size that was later determined to be incorrect. In reaching that conclusion, the Board cites Ms. Trent's testimony that due diligence investigation work was completed. The Board finds the assessor's records are not the definitive authority for improvement square footage figures to be used in sale transactions. Further, Sales 1, 2, and 3 all occurred prior to the taxpayer's purchase of the subject unit and with that sale information available and despite Petitioner's aforementioned claims about those condominium properties and sale prices, the taxpayer was willing to pay an even higher price for the subject property. The Board concludes that the four sales used by Respondent's witness are valid sales for comparison to the subject property.

The Board takes note that Respondent discovered the Enclave unit size discrepancies between the assessor's records and the recorded plat map and has taken the appropriate steps to correct what it determined to be errors. That resulted in a recommendation to reduce the assigned value for the subject property to a figure that is significantly lower than Petitioner's purchase price near the end of the statutory base period.

The Board finds it credible that the Enclave community has had significant capital improvement expenses associated with deferred maintenance. However, the majority of the information regarding the extent of the restoration required and the associated cost estimates was not known until after the January 1, 2019 assessment date, the date of the condition of the subject property used by the assessor for the 2019 tax year assessment. Also, supporting invoice documents with the applicable dates was not provided and the degree to what information was known about the deferred maintenance and estimated costs to cure as of January 1, 2019 is essential. There could be justification for the Eagle County assessor to consider the potential impact on value to the subject property of those deferred maintenance capital improvements for one or possibly more subsequent tax years. The Board does not conclude to an opinion about any adjustment that might be considered in the market approach to value analyses for subsequent tax years. The Board urges Petitioner to

provide detailed and dated documentation regarding deferred maintenance restoration requirements and costs to the assessor's office. Petitioner has the burden to persuade Respondent and/or the Board the value assigned to the subject property is not correct. For that reason, Petitioner cannot claim it does not have a responsibility to present information to the assessor that could affect valuation in either a positive or negative manner.

The Board concludes the 2019 actual value of the subject property should be reduced to Respondent's recommended value of \$658,260.

ORDER:

Respondent is ordered to reduce the 2019 actual value of the subject property to \$658,260.

The Eagle County Assessor is directed to change their 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-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 11th day of December 2019.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

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 Lishchuk

Milla Lishchuk

