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| **BOARD OF ASSESSMENT APPEALS,**<br>**STATE OF COLORADO**<br>1313 Sherman Street, Room 315<br>Denver, Colorado 80203<br><br>Petitioners:<br>**GEORGE ELWYN & BARBARA BRENKERT,**<br>v.<br>Respondent:<br>**DENVER COUNTY BOARD OF COMMISSIONERS.** | |
| Attorney or Party Without Attorney for the Petitioner:<br><br>Name: Janet L. Stravinsky<br>Address: 6193 South Magnolia Court<br>Centennial, Colorado 80111<br>Phone Number: (303) 796-8491 | **Docket Number: 43556** |

## ORDER

**THIS MATTER** was heard by the Board of Assessment Appeals on March 24, 2005, Diane M. DeVries and Karen E. Hart presiding. Petitioners were represented by Janet L. Stravinsky, Personal Representative. Respondent was represented by Maria Kayser, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax year 2003.

## PROPERTY DESCRIPTION:

Subject property is described as follows:

**1290 South Race Street, Denver, Colorado**
**(Denver County Schedule No. 05231-11-040-000)**

The subject property consists of a 7,592 square foot site with a 3,487 square foot remodeled greenhouse building.

## ISSUES:

### Petitioners:

Petitioners contend that the subject property has been used in conjunction with the residential parcel and should therefore receive a residential assessment rate. Respondent has incorrectly classified the property as commercial.

### Respondent:

Respondent contends that the subject is a non-residential property and must be valued according to its actual use on the assessment date. The subject property is not a residence and is not an integral part of the contiguous residential property.

## FINDINGS OF FACT:

1. Petitioners' witness, Ms. Janet Stravinsky, Personal Representative and daughter of Petitioners, testified that the subject property was part of a commercial greenhouse operation until the 1980s. However, the property has not been used commercially for over 30 years and should have been reclassified to a residential use in 1981. Her father added a garage to the greenhouse structure in 1981. The greenhouse was used as a playhouse/entertainment area for the family, and her father napped in the structure every day. The greenhouse was separated from the house parcel by a driveway; they are contiguous parcels. The structure was subsequently torn down in March 2003 due to its encroachment onto her parents' house property.

2. Under cross-examination, Ms. Stravinsky testified that her parents sold the greenhouse operation in 1976 but purchased the subject property back in the 1980s. The interior finish of the greenhouse was cement floor, indoor/outdoor carpeting, toilet, sink, and drinking water. The garage occupied a 30' by 35' portion of the greenhouse including shared walls, heating and air conditioning systems. A workshop, hobby train, ping-pong table, and a sitting area for family and friends were located in the building. The grandchildren and their friends slept in the building on overnight stays, and it was used for neighborhood parties and Daughters of the American Revolution meetings. Although the house and the greenhouse are listed as two separate properties, she could not sell the greenhouse property separately from the house. The greenhouse and the house shared a water main. She agrees with Respondent's value, but not the classification.

3. Petitioners' witness, Mr. Robert Stravinsky, son-in-law of Petitioners, testified that in1980, he worked with his father-in-law to upgrade the greenhouse for recreational purposes. They added air conditioning and heating to use the structure as a family activity area throughout the year. The three-car garage effectively comprised the east side of the greenhouse structure.

4. Petitioners agree with the Respondent's appraised value of $309,000.00 but are requesting a residential classification and assessment rate for the subject property for tax year 2003.

5. Respondent's witness, Mr. Richard Phinney, a Certified General Appraiser with the Denver County Assessor's office, presented the following indicators of value:

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| Market: | $308,000.00 (land only) |
| Cost: | $317,000.00 |

6. Based on the market approach, Respondent's witness presented an indicated value of $308,000.00 for the subject property's land only.

7. Respondent's witness presented five comparable sales ranging in sales price from $51.75 to $68.31 per square foot and in size from 4,670 to 6,740 square feet. After adjustments were made, the sales ranged from $46.57 to $61.48 per square foot. All of the properties were zoned residential and were located in the subject property's neighborhood.

8. Mr. Phinney used the market approach to conclude to a land value of $40.57 per square foot, or $308,000.00. The subject property was valued based on a primary site size of 6,000 square feet with an excess land area of 1,592 square feet. The excess land was valued at 23.41% of the primary site value conclusion. Mr. Phinney assigned a $1,000.00 nominal improvement value.

9. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $317,000.00.

10. Mr. Phinney prepared a cost approach using Marshall & Swift Valuation Service for the greenhouse structure with an effective age of 63 years and a depreciation rate of 80%. He used the "Greenhouse, Straight-Wall" occupancy group with 31% of the building being a garage. Mr. Phinney did not give this approach much weight.

11. Mr. Phinney did not prepare an income approach due to a lack of available data.

12. Mr. Phinney testified that the subject property's address is 1290 South Race Street and the address of the residence is 1296 South Race Street. The subject property has a separate schedule number from the residential property. The zoning is R-1 and the greenhouse was a legal nonconforming use. Mr. Phinney did not inspect the subject property until after the structure was demolished and has relied upon file data. File data indicates that the garage occupied approximately 30% of the structure.

13. Mr. Phinney testified that the subject property was classified as non-residential, as it was a non-residential structure. It is not necessarily commercial, just non-residential. The subject property did not have a residence and therefore it was classified as non-residential. He does not believe it is an integral part of the contiguous residential parcel.

14. Mr. Phinney testified that, according to the demolition permit, the subject property was torn down prior to August 2003. However, the improvement value was nominal and he did not prorate the value.

15. Upon questioning by the Board, Mr. Phinney admitted that no commercial activity was being conducted on the subject property as of the assessment date. He believes that the subject is not an integral part of the residential use and therefore cannot be classified residential. The use of the subject property as a garage does not fulfill the "integral" use requirement as the house has an attached garage. He believes that the subject property could have been separately sold, regardless of the building encroachment onto the residential property. He does not believe it would have been necessary to demolish the structure in order to sell it. He admitted that classification must be based on use, even if it is an illegal use. He admitted that there was no "non-residential" abstract classification.

16. Respondent assigned an actual value of $327,100.00 to the subject property for tax year 2003, but is recommending a reduction to $309,000.00, with $308,000.00 allocated to land and $1,000.00 allocated to the improvements.

## CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation and classification of the subject property were incorrect.

2. Page 5 of Respondent's Exhibit 1 states: "The Assessment Division of the City of Denver is aware that the commercial activities which had previously been carried out on the subject property had terminated by the date of January 1, 2003. It remains the intent of the Assessment Division, however, to classify and assess the parcel as commercial property for tax year 2003." Respondent argued that the controlling issue is that the structure was non-residential in nature and that a non-residential rate of assessment should apply. The Board disagrees. We believe the building's actual use as of the assessment date is the controlling issue.

3. As referenced in Respondent's Exhibit 3, page 6.1, "Property is classified, valued, and assessed according to its use on January 1, the assessment date". The property classes and their assessment rates are also listed on this page. There is no "non-residential" property class listed. The overwhelming evidence indicates that the subject property had not been used for any type of income producing purpose since 1980. The subject building, though originally constructed as a greenhouse, was subsequently remodeled for use as a garage and for recreational residential purposes. Mr. Brenkert used the property every day for napping. Hobbies, family get-togethers, and other activities were held there. The building had a three-car garage. These are clearly residential uses.

4. The Board recognizes that there is no residence located on the subject property. Page 6.7 of Respondent's Exhibit 3 states, "Parcels of land, under common ownership, that are contiguous to land used for a residence and used as an integral part of a residence, are classified as residential property." The subject property's only use since 1980 was as an extension of the residential use of the contiguous parcel. Therefore, the Board finds that the subject property should be classified and assessed as residential property.

5. Based on all of the evidence and testimony presented, the Board concluded that the 2003 actual value of the subject property should be reduced to the recommended value of $309,000.00, with $308,000.00 allocated to land and $1,000.00 allocated to improvements, with a residential classification and assessment rate.

## ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2003 actual value for the subject property of $309,000.00 with a residential classification and assessment rate.

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

## APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

**DATED and MAILED** this 12th day of April 2005.

**BOARD OF ASSESSMENT APPEALS**

Karen E. Hart

Karen E. Hart

Diane M. DeVries

Diane M. DeVries

This decision was put on the record

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

Penny S. Lowenthal

Penny S. Lowenthal

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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