

<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>HARTSEL LEROY BYERS,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 47725</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 22, 2008, Diane M. DeVries, Debra A. Baumbach, and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Charles T. Solomon, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2005.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**2025-2035 South Cherokee Street, Denver, Colorado  
(Denver County Schedule No. 05272-05-022-000)**

The subject property consists of a 5,240 square foot brick building built in 1973 on a 6,250 square foot site. The first floor (4,240 square feet) consists of warehouse, office, and storage space. The second floor (1,000 square feet) consists of living space (500 square feet) and storage (500 square feet).

According to Respondent's written decision entered December 14, 2006, the actual value assigned to the subject property was \$141,600.00 for the commercial portion and \$68,600.00 for the residential portion, totaling \$210,200.00 for tax year 2005. Petitioner is requesting residential classification for the entire property.

Petitioner testified that 500 square feet on the upper level has been his residence since original construction. The front portion of the first level, which originally had commercial tenants,

has been vacant for many years and is used for storage, as is the remainder of the upper level. The residential space consists of a living area, kitchen, bedroom, and bathroom. Petitioner is requesting that the entire building be classified residential, as he is the sole occupant and because there has been no commercial enterprise for many years.

Respondent's witness stated that the subject property's change in use from residential (prior structure) to commercial (office/warehouse construction) in 1973 terminated the former residential classification. On-site living quarters have been an example of illegal use since 1973. Respondent's witness testified that current zoning is I-1 (industrial), which does not permit residential use.

Respondent presented two appraisals; mixed-use with an indicated value of \$262,000.00; and 100% commercial use with an indicated value of \$376,900.00. Both support the assigned value of \$210,200.00. Respondent's witness testified that allocation of the assigned value for tax year 2005 is as follows: 3,000 square feet or 57% as residential (2,000 rear square feet of the first floor and the total 1,000 square feet of the second floor); and 2,240 square feet or 43% as commercial (front portion of the first level).

The Board agrees with Respondent's presented allocation of commercial/residential use, since it has occurred since 1973. The Board, recognizing that a large portion of the building is warehouse/storage/office, does not agree with Petitioner that 100% should be assigned residential classification.

Respondent presented sufficient probative evidence and testimony to prove that the tax year 2005 valuation of the subject property was correct. The Board agrees with the total value assigned to the subject property for tax year 2005 and with the allocation presented by Respondent's witness of 57% residential and 43% commercial. When applied to the total assigned value of \$210,200.00, \$119,815.00 is allocated to the residential portion of the property and \$90,385.00 is allocated to the commercial portion of the property.

### **ORDER:**

Respondent is ordered to allocate the total assigned value of \$210,000.00 as follows: \$119,815.00 to residential and \$90,385.00 to commercial for tax year 2005.

The Denver County Assessor is directed to change his 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 Colorado Revised Statutes ("CRS") section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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.

Colo. Rev. Stat. § 39-10-114.5(2) (2007).

**DATED and MAILED** this 24<sup>th</sup> day of June 2008.

**BOARD OF ASSESSMENT APPEALS**

*Diane M DeVries*  
Diane M. DeVries

*Debra A Baumbach*  
Debra A. Baumbach

*MaryKay Kelley*  
MaryKay Kelley

This decision was put on the record

**JUN 24 2008**

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

*HAH*  
Heather Heinlein

