BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 64105
Petitioner: **ELIZABETH A. AND Z. L. PEARSON JR.,** v. Respondent: **DENVER COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 25, 2014, Diane M. DeVries and Debra A. Baumbach presiding. Z. L. Pearson Jr. appeared *pro se* on behalf of Petitioners. Respondent was represented by Charles T. Solomon, Esq. Petitioners are protesting the residential classification of their enclosed balcony for tax year 2013 and requesting that it be reclassified and valued as a common element.

Subject property is described as follows:

1551 Larimer Street, Unit 503
Denver, Colorado
Denver County Schedule No. R02331-16-045-045

The subject property is a residential condominium unit within The Larimer Place Condominiums, a high rise condominium development located in the Central Business District of Denver. The unit originally consisted of 1,315 square feet of living area and included two bedrooms, two bathrooms and a 107 square foot covered balcony. The unit was subsequently remodeled and the covered balcony was enclosed which added an additional 107 square feet to the living area.

Respondent assigned a value of $263,700 for the subject property for tax year 2013 but is recommending a reduction to $246,200. Petitioners agree with the recommended reduction in value to $246,200 for tax year 2013.

Mr. Pearson argued Respondent has incorrectly classified the subject's enclosed balcony as part of the residential living area and not as part of the general common element. Mr. Pearson

considers the area to be an enclosed balcony, not a living area. Mr. Pearson stated that according to The Amended Declaration of Covenants, Conditions and Restrictions of The Larimer Place Condominiums a covered balcony is a general common element and should be classified and valued as a common element regardless of any finish. Mr. Pearson stated that Section 38-33.3-103(5)(a),C.R.S., defines all portions of the condominium or cooperative other than the units as a common element. Section 38-33.3-103(19), C.R.S. defines "limited common element" as a portion of the common elements allocated by the declaration or by operation of Section 38-33.3-202(1)(b) or (1)(d) for the exclusive use of one or more units but fewer than all of the units. In addition, according to Section 38-33.3-105(2), C.R.S. in a condominium or planned community with common elements, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed.

Mr. Pearson testified that although he agreed to the reduction in value by Respondent, the enclosed balcony should be reclassified as part of a common element and valued based on a proportional interest of 0.0046664.

Respondent's witness, Melissa J. Reed, a Certified Residential Appraiser, testified she inspected the subject property on July 24, 2013. Ms. Reed testified that the Denver County Assessor's Office classifies all balconies in condominium developments as a limited common element. Ms. Reed stated that limited common elements are a subset of general common elements. Ms. Reed defined limited common element, as reserved for the use of the owners of a certain unit to the exclusion of all others. Whereas, general common elements are defined as hallways, swimming pool, parking spaces, storage areas and any area open for the use of everyone. Ms. Reed testified that based on the definition contained in the Amended Declaration of Covenants, Conditions and Restrictions of The Larimer Place Condominiums and Section 38-33.3-202(d), C.R.S. she properly classified the covered balcony as a limited common element.

Ms. Reed testified that based on her inspection of the unit and review of a building permit issued by Denver County on April 21, 2008, she considered the enclosed balcony as finished living area. Ms. Reed stated that regardless of any finish, the enclosed balcony would be classified as a limited common element. Ms. Reed testified that because the enclosed balcony was converted into living space, she valued the area as part of the square footage of the unit.

Respondent presented sufficient probative evidence and testimony to prove that the enclosed balcony area was correctly classified for tax year 2013. The Board based this conclusion on The Amended Declaration of Covenants, Conditions and Restrictions of The Larimer Place Condominiums identifying balconies as limited common elements that are reserved for the use of the individual owner of the airspace. Further, Section 38-33.3-202(d), C.R.S., defines any shutters, awnings, window boxes, doorstep, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, as limited common elements allocated exclusively to that unit. The Board finds that the enclosed balcony meets the definition of a limited common element under the statute.

The Board does not find Petitioners' interpretation of The Amended Declarations of Covenants, Conditions, and Restrictions of The Larimer Place Condominium, Sections 38-33.3-

202(d), 38-33.3-105(2), and 38-33.3-103(19), C.R.S. to be persuasive. Though Mr. Pearson testified that an enclosed balcony is a general common element, he provided no evidence supporting Petitioners' argument that enclosed balconies should be classified as general common elements as opposed to limited common elements. In addition, Petitioners did not provide the Board with refuting evidence that Respondent incorrectly considered the enclosed balcony as a finished living area.

ORDER:

Respondent is ordered to reduce the 2013 actual value of the subject property to $246,200.

The Denver County Assessor is directed to change his/her 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 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 5th day of September, 2014.

BOARD OF ASSESSMENT APPEALS

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Diane M. DeVries

Debra A. Baumbach

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

Milla Lishchuk

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