

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 65647

Petitioner:

JEFFERY A. STRAUSS AND DANIEL E. REMUS,

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 3, 2015, Diane M. DeVries, Sondra W. Mercier and MaryKay Kelley presiding. Petitioners were represented by Mark W. Gerganoff, Esq. Respondent was represented by Mitch Behr, Esq. Petitioners are protesting the 2014 actual value of the subject property.

1. Background

Subject property is described as follows:

Address: 1130 E. 7th Avenue, Denver, Colorado
Denver County Schedule No. 05023-32-029-000

The subject property is an 8,035 square-foot three-story brick residence with basement, three-car garage, and a two-story carriage house. It was built in 1904 on a 15,600 square foot lot. In recent years, the residence underwent significant renovation and remodeling estimated at approximately \$704,100 in costs. The work on the residence included the following: radiant floor heat and high velocity air conditioning; new insulation, kitchen, living, dining, breakfast and sun rooms; retrofitted four-floor elevator; updated basement; home theater; pool room; gym; ¾ bath with steam room; endless pool; and a hot tub.

Respondent assigned an actual value of \$3,860,900 for tax year 2014. Petitioners are requesting a value of \$2,288,400 for the same tax year.

Petitioners argue that the subject's 2014 (intervening year) value should remain the same as the 2013 (re-assessment year) value, at \$2,288,400. In support of their argument, Petitioners cite Sections 39-1-103(15) and 39-1-104(10.2)(a), C.R.S., contending that a property's actual value established in the reassessment year controls the intervening year valuation. According to Petitioners, the Assessor may not change the actual value of the property during the intervening year absent an "unusual condition." Such "unusual conditions" are specifically defined in Section 39-1-104(11)(b)(I), C.R.S., and Petitioners allege that no such unusual condition had occurred which would have allowed the Assessor to revalue the subject property for the 2014 intervening tax year.

Petitioners argue that while Section 39-1-104 (11)(b)(I), C.R.S. includes "remodeling of a structure" as one of the "unusual conditions" that authorizes the Assessor to revalue property during an intervening tax year, such remodeling must actually occur during the intervening year (e.g., the remodeling should have occurred during the 2014 intervening year) in order to meet the statutory definition of an "unusual condition." According to Petitioners' position, while the statute does not specifically define the time frame when the remodeling of a structure must take place in order to classify as an "unusual condition," it is implicit in the statute, as well as in the case law that the unusual conditions exception is limited to conditions arising during the intervening year. *See Petitioners' Post-Hearing Brief*, at 5.

According to Petitioners, the remodeling of the subject, which started in 2007 and concluded in 2011, did not meet the statutory definition of an unusual condition because it took place and was finalized outside the intervening year period, e.g. well in advance of the 2014 tax year. Petitioners' witness, Mr. Todd Stevens, testified that there had been no change in the condition of the property between the reassessment and the intervening years to justify the increase in value. Mr. Stevens testified before the Board that remodeling on the property started in 2007 and was concluded in 2011 with no new construction taking place in 2012 or 2013. Per the witnesses' testimony, the latest construction permit for the remodeling of the property was finalized by the County on September 26, 2011.

Although all construction permits for remodeling were finalized by the County's building department in 2011, the Assessor's Office did not inspect the home until 2013 and did not increase the subject's assessed value until 2014. According to Mr. Stevens, the subject's 2013 value should have reflected the remodeling and that value should have carried over to the 2014 intervening year. Mr. Stevens argued that Petitioners should not be penalized for the County building department's failure to communicate the information concerning the increase in value of the subject to the Assessor's Office, or for the Assessor's failure to revalue the subject residence in a timely manner. Accordingly, Mr. Stevens requested that the Board reduce the subject's 2014 intervening tax year value to match the subject's 2013 reassessment tax year value of \$2,288,400.

According to Respondent, the statute does not limit, restrict or designate a time frame within which the "unusual condition" must occur to allow the Assessor to change a property's value for an intervening tax year. *Respondent's Responsive Post-Hearing Brief*, at 2. Respondent alleges that "remodeling of a structure" is one of the specified types of "unusual conditions" in the statute and the undisputed evidence at the BAA hearing made it clear that there was such remodeling of the subject property. *Id.* at 3. Hence, Respondent argues that the subject property's remodeling which

took place between 2007 and 2011 qualifies as an “unusual condition” allowing the Assessor to increase the subject’s value during the 2014 intervening tax year.

Respondent’s witness, Mr. Timothy K. Muniz, Certified General Appraiser for the Denver County Assessor’s Office, testified that he first learned of the extensive remodeling of the subject in 2013. The discovery was prompted by Petitioners’ appeal of their 2013 assessment which was later withdrawn. According to Mr. Muniz, because Petitioners withdrew their appeal for 2013, the Assessor’s Office was unable to amend the subject’s actual value reflecting the remodeling until 2014 tax year. Mr. Muniz testified that he was aware of the initial 2007 permit date for remodeling but was unaware that the County’s building department had inspected the completed work and closed out the final remodeling permit in 2011. He testified that the heavy work load and time constraints prohibited an earlier field inspection by the Assessor’s Office.

Mr. Muniz presented a Market Approach with a value conclusion of \$3,938,500 supporting the assigned value of \$3,860,900 for 2014 tax year. Due to the extensive nature of the improvements completed on the subject, Mr. Muniz selected six comparable sales located within one mile of the Denver Country Club. Adjustments were made for the comparables’ proximity to the Country Club (\$100,000) and Polo Club (\$250,000). Mr. Muniz also made adjustments for site, grade and condition of the properties. Mr. Muniz’s appraisal also took into consideration the amenities and quality of the improvements, garages and basements, fireplaces and carriage homes. Respondent requested the Board to uphold the assigned value of \$3,860,900 for the subject property for tax year 2014.

2. Adjustment During an Intervening Year

Colorado’s property tax statutes provide for the biennial appraisal and valuation of real and personal property for property tax purposes. Section 39-1-104(10.2)(a), C.R.S. Specifically, in an odd-numbered year, *e.g.* the “reassessment” year, the assessor determines the actual value of property and this actual value is generally carried over to the following even-numbered year, *e.g.*, the “intervening” tax year. See § 39-1-104(10.2)(a); see also *Cherry Hills Country Club v. Bd. of Cnty. Comm’rs*, 832 P.2d 1105, 1109 (Colo.App.1992) (observing that, absent certain statutory exceptions, the valuations of a taxpayer’s land should be the same for both years in a reassessment cycle).

Section 39-1-104(11)(b)(I), C.R.S., however, allows an assessor to amend a property’s actual value in an intervening year when certain conditions are met. Most crucial for this case, however, is the statutory distinction between correct and incorrect reassessment year valuations. Specifically, if the reassessment year valuation has been determined to be correct, then the intervening year valuation must not deviate from the correct reassessment year valuation absent “unusual conditions” as defined by the statute. On the other hand, when the reassessment year valuation is incorrect, no such proof of unusual condition is necessary; the statute authorizes the assessor to revalue the property for the intervening year to reflect a correct level of value. See Section 39-1-104(11)(b)(I):

If any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value;

however, the assessor shall not revalue such property above or below its correct level of value except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition.

Thus, the statute requires a county assessor to correct an incorrect assessment in or between base years, regardless of the existence of any unusual conditions. § 39-1-104(11)(b)(I); *24, Inc. v. Bd. of Equalization*, 800 P.2d 1366, 1369 (Colo. App. 1990). The evidence presented to the Board during the hearing has demonstrated that the subject property has been incorrectly assessed during the 2013 reassessment tax year. For the 2013 tax year, the subject should have been assessed “according to its taxable status, use, and condition on the assessment date.” *Assessor’s Reference Library*, Vol. 2, Sec. 2.6. (Emphasis added). The parties presented uncontroverted evidence that the subject was already in fully remodeled condition on January 1, 2013 assessment date. However, the Assessor’s 2013 valuation of the subject did not reflect the extensive \$704,100 remodeling performed on the property between 2007 and 2011. Although the County’s Building Department finalized the building permits on the property in late 2011, the County’s Assessor’s Office did not conduct inspection of the property until sometime in 2013 and did not increase the subject’s assessed value reflecting the renovations until tax year 2014. Even Petitioners’ representative, Mr. Gerganoff, conceded on the record that Respondent’s 2013 valuation of the subject should have, but erroneously did not, include the value of the remodeling.

Because the subject was not assessed at its correct level of value during the reassessment year, the Assessor was authorized to correct the value of the subject for the intervening year. Section 39-1-104(11)(b)(I), C.R.S. Respondent has revalued the subject at \$3,860,900 for the intervening 2014 tax year. In support of this value, Respondent developed an appraisal report and presented the testimony of Mr. Muniz explaining the application of the Market Approach in developing the subject’s 2014 value which the Board found to be well-supported and persuasive.

The Board agrees with Respondent that the correct value of the subject property for the intervening year of 2014 is \$3,860,900 for the following reasons. First, Petitioners did not meet their burden of proof to show that Assessor’s valuation was incorrect. *See Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005); 8 Colo. Code of Regulations 1301-1 Rule 14(a). Second, Petitioners relied solely on the legal argument that the significant remodeling to the subject property prior to 2013 was not an unusual condition because it occurred before the reassessment year. The Board is unpersuaded by this argument because the statute provides that an assessor should correct an incorrect value, and does not limit such corrections to unusual conditions. Third, the undisputed evidence showed, and Respondent and Petitioners agreed, that the value assigned to the subject property in 2013 was incorrect because it did not take into account the extensive remodeling to the subject property. Fourth, Respondent presented probative and credible evidence, utilizing the Market Approach to valuation, showing that the correct value of the subject property is \$3,860,900.

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).

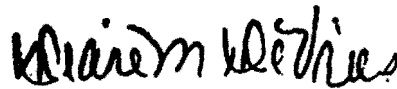
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 22nd day of October, 2015.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Sondra W. Mercier

MaryKay Kelley

MaryKay Kelley

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

M Lishchuk

Milla Lishchuk

