

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**  
1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 69234**

Petitioner:

**FROSTY WHISKERS, LLC,**

v.

Respondent:

**TELLER COUNTY BOARD OF EQUALIZATION.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on April 20, 2017, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by S. Jan Cleveland, Esq. Respondent was represented by Matthew A. Niznik, Esq. Petitioner is protesting 2016 classification of the subject property.

The subject property is described as follows:

**208 E. U.S. Highway 24, Woodland Park, CO  
Teller County Schedule No. R0000709**

Petitioner and Respondent stipulated to admission of all exhibits including Petitioner's Exhibits 1-22 and Respondent's Exhibits A-E.

Description of the Subject Property

This appeal involves a one and one-half story building located in the City of Woodland Park in Teller County. According to testimony, the building was originally a residential dwelling, later converted to a restaurant, and then to commercial and/or mixed use. According to testimony and exhibits, the building was originally constructed circa 1964, remodeled beginning in 1986, and contains ±3,900 gross square feet. Site size is 0.28 acres, all public utilities are available, and the property is zoned CBD (Commercial Business District) through the City of Woodland Park. The current owner purchased the building in 2010 and began a total remodel of the property in 2011.

The building is 100% owner-occupied. Suites A and B are used for the owner's insurance business and have previously been classified as commercial by Teller County, Suite C has historically been used and has been classified as a residential unit, and Suite D is unfinished, has been classified as residential, and used for miscellaneous storage

#### Purpose of the Appeal

The value of the subject is not in dispute; the parties only dispute the classification of the subject. Respondent has reclassified the subject as 100% commercial for the 2016 tax year reflecting what Respondent considered the actual use of the property as of January 1, 2016. Petitioner argues that given the residential unit and storage, the subject should continue to be classified for 2016 tax year as a split of residential (Suites C & D) and commercial (Suites A & B) similar to previous years. The previous allocation of space by Teller County was 43% residential and 57% commercial; however, the Board cannot determine based on a review of the exhibits, the square footage or percentages of each of the individual units.

#### Evidence Presented Before the Board

Petitioner's first witness, Ms. Sally Riley, Planning Director, City of Woodland Park testified regarding the City's permit issuing and inspection process for the subject property as outlined in Petitioner's Exhibit No. 22. Excerpts Nos. 6, 7, 8, & 11 of this Exhibit (the Affidavit) are as follows:

¶6 The City Council approved a "Conditional Use Permit" on March 17, 2011, which is documented by a letter dated March 18, 2011 from Scott Woodford, City Planner (Attached as Exhibit 1). This Conditional Use Permit was good for two years, i.e. until March 17, 2013, and allowed the property owner this period of time to submit a ZDP to the Planning Department to make all the upgrades and/or changes to a property that are needed in order to satisfy Teller County's Building Department requirements.

¶7 As of July 1, 2011, just three months after the Conditional Use Permit was issued, three Zoning Development Permits (ZDP 110389 - Suite D; ZDP 110390 - Suite C; and ZDP 110391 - Suite B) for the Property were issued by the Woodland Park Planning Department. (Attached as Exhibit 2 are all three ZDPs). Specifically, ZDP 110390 recognized and approved the upgrades and changes the Property owners had made such that Suite C of the Property had been transformed into residential apartment living quarters.

¶8 I am unsure why the representative of the Teller County Assessor's Office testified that no ZDP had been properly issued. My records show that copies of all three ZDPs were emailed to the Assessor's Office on June 20, 2016 at 11:55 AM and receipt of them was acknowledged by Tiffany Sweet at 12:56 P.M.

¶11 On Friday, August 26, 2016, I personally toured the Property. I hereby confirm that this building is separated into four suites: Suites A and B are used for commercial office space, and Suite D is unfinished. The final suite, Suite C, is solely a residential apartment living space, accessible only from a metal stairway located on the exterior of the building, and from an internal staircase, via a locked door marked PRIVATE. It contains a private living area, bedroom area, dining area, bathroom with two sinks, shower stall and toilet, balcony, closet and limited cooking area.

In addition to the above, Ms. Riley further indicated that the residential use had been approved by the fire department and building department.

Petitioner called Ms. Erica Szymankowski, Managing Member of Frosty Whiskers, LLC and the occupant of the subject property. Ms. Szymankowski testified that she owns the subject building, and had been directly involved in the remodel of the property since it was acquired. Ms. Szymankowski further testified that Suite C had obtained all of the necessary permits and approvals for residential use through Woodland Park, and that she considered this unit as her living quarters and primary residence given its location, degree of finish, and proximity to her business. Ms. Szymankowski stated that Suite D was used for the storage of personal items rather than any business use, and that there had been no change in use for these two units over the past years.

Respondent's witness, Ms. Betty Clark-Wine, Teller County Assessor, was called to testify on behalf of Teller County. Ms. Clark-Wine stated that the subject was located in a prime commercial area and that any future use would be office; that the proper permitting and approvals had never been obtained for residential use; and that the level of finish in Suite C was not conducive to permanent residential use. Respondent cited exhibits addressing Ms. Szymankowski's purchase of another property in 2013, which has been used by Ms. Szymankowski as a primary residence.

The major points of contention between the parties were that Petitioner claims that all necessary permits and approvals for the residential use were obtained and that the residential suites are used as a primary place of residence and living quarters for personal use. Respondent argues that the necessary permits for residential use were never obtained; that the necessary residential finish for Unit C was never completed and its use as a residence constituted only an incidental use; that Suite D had been erroneously classified by the County, and Suites C and D cannot be considered a primary residence under the statute given that Petitioner secured permanent housing via a home acquired in 2013.

#### The Board's Findings

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2016. Based on testimony and exhibits, the Board finds that all necessary permits and approvals, as well as interior finish for the residential use had been obtained and completed by Petitioner and that, based on Petitioner's testimony and exhibits, the classification of Unit C as a primary rather than incidental residence is supportable. The Board further finds that, subject to Section 39-1-102 (14.4) (b), C.R.S., there were no actual use changes to Suite C, and that no erroneous classification occurred that would warrant reclassification. The Board further finds that given the location (1<sup>st</sup> Floor), the finish, and the use (general storage) of Suite D, a reclassification to commercial is warranted given that it was considered to be previously erroneously classified as residential use by the County.

**ORDER:**

Respondent is ordered to reclassify the Suite C as residential. The classification of the remaining suites is to remain as commercial.

**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).

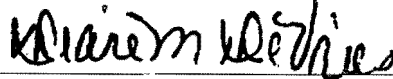
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 6th day of June, 2017.

**BOARD OF ASSESSMENT APPEALS**

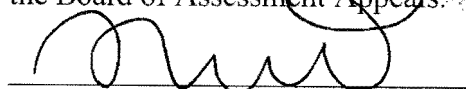


Diane M. DeVries



James R. Meurer

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



Milla Lishchuk

