

<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>DUNE MOUNTAIN HOLDINGS LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>BOULDER COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.:71691</b></p>
<p><b>ORDER</b></p>	

This matter was heard by the Board of Assessment Appeals on July 23, 2018, Diane M. DeVries and Gregg Near presiding. Mr. Thomas J. Harrington appeared pro se on behalf of Petitioner. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner’s Exhibits 1-8 and Respondent’s Exhibits A-J were admitted into evidence.

Subject property is described as follows:

**359 Arapahoe Avenue (multiple units)  
Boulder Colorado  
Boulder County Schedule Nos. R0065973, R0065975, R0065976,  
R0065977, R0065979, R0065980, R0065981, R0065982 R0065987, R0065990,**

The subject units are located within the Arapahoe West condominium development consisting of townhome style condominiums situated on leased land. The units are all 851 square feet with two bedrooms and a full bath. One of the units has an additional half bath. Dune Mountain Holdings, LLC is the owner of ten subject units within the complex.

Evidence Presented Before the Board

Petitioner presented the following value for each of the ten units:

Market: \$43,712.50  
Cost: Not applied  
Income: Not applied

Petitioner is requesting an actual value of \$43,712.50 for each of the ten units comprising Petitioner's ownership of the subject properties for tax year 2017.

Petitioner presented two comparable sales located within the subject complex that were purchased on April 16, 2015 with a sale price of \$39,000 each. After applying a 10% adjustment to the sales Petitioner concluded a current value of \$43,712.50 for each of the ten properties under the ownership of Dune Mountain Properties, LLC.

Mr. Harrington testified that all of the condominium units within the complex are located on leased land. Condominium owners pay a fixed land lease payment for four years with annual upward adjustments based on the Consumer Price Index. In the fifth year, either the lessee or lessor can ask for a reappraisal of the land encumbered by the lease. The land lease payment is then set for the next four- year period at 12% of the appraised value. Petitioner stated the significant recent increases in Boulder land values have led to large upward adjustments to the land lease payments. Mr. Harrington stated that many of the condominium purchasers purchased their units without full understanding of the land lease and Dune Mountain Properties, LLC has been the subject of lawsuits by different parties. This has led to significant costs to defend the leasehold.

Petitioner contends the units that were purchased in 2015 represent true arm's length transactions because both parties were knowledgeable about the value of the condominium units under the land lease arrangements. Mr. Harrington questions the reliability of Respondent's comparable sales as there is no evidence the buyers in those transactions were fully aware of the conditions of the land lease.

Respondent presented the following assigned values:

Market: Units 7, 8, 9, 11, 12, 13, 14, 19 and 22: \$123,000 each. Unit 5  
\$129,800  
Cost: Not applied  
Income: Not applied

Respondent's witness David Arthur Martinez, an Ad Valorem appraiser for the Boulder County Assessor's Office, presented five comparable sales ranging in sale price from \$115,000 to \$135,000. Each sale contained 851 square feet. After adjustments were made, the sales ranged from \$123,600 to \$145,000.

Mr. Martinez adjusted the comparable sales for time (market conditions), the presence, or lack of, a half bath, locations varying from interior to end units and for remodeling. The comparable sales were all located within the subject development. For sales without a half bath, the adjusted value range was from \$123,600 to \$143,000. The witness reconciled to value opinions ranging from

\$132,000 to \$135,000. For sales with a half bath, the adjusted value range was from \$127,600 to \$145,000. The witness adopted a value opinion of \$136,000 for unit No. 5, the only unit with a half bath.

After the above, the witness concluded market values of \$132,000 for seven of the units, (7, 8, 9, 11, 14, 19 and 22) \$135,000 for units 12 and 13, and \$136,000 for unit 5.

Mr. Martinez presented Multiple Listing Service (MLS) information for all five of the comparable sales. The sales all occurred within the base period. The witness testified to no experience in valuation of leaseholds and no knowledge of any other leaseholds in Boulder County. The witness referred to a leasehold ownership held by his parents in another state where there was no land lease payment required. Mr. Martinez estimated the condominium sale price as if there was no leasehold. Mr. Martinez stated Petitioner's comparable sales were disqualified because they involved business associates. He also pointed to one of Petitioner's sales as a \$0 purchase that Petitioner reported was purchased from the County Treasurer.

#### The Board's Findings

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

The Board was not swayed by the comparable sales provided by Petitioner as they do not represent transactions between a willing seller and a willing buyer as required by USPAP. In fact Petitioner stated the sellers for his comparables had determined they had no recourse but to sell the units to Petitioner.

The Board questions the MLS data provided by Respondent finding the listing data was not clear or consistent in several of the reported sales. This factor was buttressed by Petitioner's testimony stating many buyers were not aware of the details of the leasehold. The Board considers the lack of direct conformation for any of the comparables relied upon by Respondent's witness to have significantly weakened the credibility of the value conclusion. However, the bulk of the information is convincing to the Board that there was an active market for units within the subject project.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

#### **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).

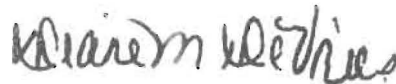
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 20th day of September, 2018.

**BOARD OF ASSESSMENT APPEALS**




\_\_\_\_\_  
Diane M. DeVries



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Gregg Near

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

  
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Milla Lishchuk