

# COMMISSIONERS PROCEEDINGS 1

**BOARD OF COUNTY COMMISSIONERS  
BOARD OF EQUALIZATION OF MORGAN COUNTY, COLORADO  
Minutes of Special Meeting  
August 2, 2018**

The Board of Morgan County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") met on Thursday, August 2, 2018 at 9:09 a.m. with Chairman Mark Arndt, Commissioner Laura Teague, Commissioner James Zwetzig and Clerk to the Board, Susan Bailey in attendance.

## **GENERAL BUSINESS**

Chairman Arndt stated this matter comes before the Morgan County Board of County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") regarding hearings for appeal of the Morgan County Assessor's valuation of property. Chairman Arndt indicated that the structure of the hearings today would follow the format allowing all property owners to have time to voice concerns related to real property values. He asked to limit comments to no more than fifteen minutes. Chairman Arndt stated the Morgan County Board of County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") would now hear matters regarding petitions for appeal of the decision of the Morgan County Assessor regarding the valuation of real property.

### **Stevens & Associates (Murdoch's)** **Schedule No: R005389**

Chairman Arndt noted the Assessor's office is present and Mike Krening, Commercial Appraiser of Morgan County Assessor's office introduced himself, stated he did receive an appeal notice and he has made attempts to contact their office with no response. Approximately four days ago, it was received that they have requested an administrative denial and asked the Board to accept that administrative denial and send this to the State.

Chairman Arndt noted that they have received written documentation of this request dated July 30, 2018 at 11:47 a.m.

Commissioner Zwetzig stated he does not agree with the administrative denials feeling the individuals should appear before the Board, stating the procedure at the state level is erroneous and the appellant should have to appear in front of the BOE to obtain the administrative denial at which time Commissioner Teague concurred.

Commissioner Teague made the motion to accept the recommendation for the administrative denials for the appeal for Stevens & Associates (Murdoch's), Schedule No: R005389, and uphold the assessor's value as recommended with Commissioner Zwetzig seconding the motion, and motion carried 3-0.

### **Peterson, Tara K.** **Schedule No: R001333**

Chairman Arndt asked the appellant to come forward who indicated her address as 113 Clayton Street, Brush, Colorado, who further provided comments in regards to her appeal. Ms. Peterson stated her property is a two story building and has on the main floor a business with a small apartment in the back, the upstairs was built to house railroad workers and it has always been an apartment in the upper level as far as she knows. She stated when she bought the place it was advertised as commercial with residential allowance upstairs. When she first bought it she anticipated to fix the upstairs and remodel the upstairs to reside there and have her business downstairs. She stated the fixtures are upstairs, including a bathroom, washer and dryer and when she bought the place there was someone living upstairs. She stated the electric bill comes as two separate addresses, one being 113 Clayton and 113A Clayton and 113A is billed as residential and always has been. The main floor is billed as commercial. She feels her upstairs should be taxed as residential and the entire property should not be taxed commercial. She further stated the commercial side of things gives her the luxury to have her business there with her residence upstairs and stated there are several buildings in Brush that are this way. She stated she has a copy of her electric bill that she can show the Board if they would wish to review it. At this time, Chairman Arndt stated if there is any evidence she would like to introduce, the Board would be happy to accept that to enter into the record.

Commissioner Zwetzig asked the appellant if the letter she provided addresses anything additional than what she stated this morning, with Ms. Peterson stating she does not believe so and reviewed the letter in detail. Commissioner Teague asked Ms. Peterson about the zoning information, with Ms. Peterson confirming that is the Brush zoning information. Commissioner Zwetzig asked about the allowance through Brush zoning allowing her to occupy the upper level, with Ms. Peterson stating yes, and as far as she is aware, it has always been residential and it had not been used commercially before. She stated that she had spoken with someone at the Assessor's office and they asked her to speak with the City of Brush and they have informed her that they have nothing to do with how the property is taxed, and its use has always been residential. Further discussion followed with information being provided as to the zoning information from the City of Brush, and stated the information has been changed to merchandising and does not understand how anyone can see it as being anything other than residential. At this time, there were no further questions for the applicant.

Mr. Michael Krening, Morgan County Deputy Assessor, and Ted Boggess, Senior Appraiser both representing the County as an agent, provided information to the Board regarding the appeal in question. Mr. Krening stated they did receive the appeal during the appeal period and at that time Mr. Boggess met with Ms. Peterson in regards to her appeal. He further stated there are other properties located on the main street in both Brush and Fort Morgan, which have been used the same way and over time the occupancy changed, and common residential fixtures are let go, they

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end up being open storage areas. After Ms. Peterson's appeal came, Mr. Boggess visited and they found that she is living in the back part of the building and also an area in the upper level and indicated that this area is set up for a residence. After the appeal, they did correct and make the apartment in the back of the main floor residential and the area they were not able to access, made it residential. He stated this is not an appeal for taxation but for classification. He stated there are no fixtures that would indicate residential providing the example, bathroom fixtures, indicating that residential requires usable area; non-use does not constitute residential use.

At this time, Ted Boggess stated he did go to the property and did see the studio apartment in the back and measured it and did remove it from the commercial assessment and put it on the residential part for assessment. He changed about 674 square feet and upstairs about 220 square feet to residential. He stated there was a room upstairs that was locked and he was unable to get access to that area given there was someone living there, so estimated that space. He stated the remaining of the upstairs, he did not see any usable fixtures, ceiling was in bad shape, missing doors and it did not appear usable as a residence. So he did not make that as residential space, and gave it the lowest rating possible to low commercial.

Commissioner Teague asked Mr. Boggess to clarify how it is taxed with part of the downstairs being residential, and part of the upstairs is residential and the remaining is commercial so there are two types of classifications. Commissioner Teague referenced the drawing provided indicating there is about a 20x11 square foot area that is considered residential with Mr. Boggess confirming that. Discussion followed what is required to classify it as residential, with Mr. Krening stating it is determined by the Assessor or its agent to see what is usable and value it accordingly. He stated in the City of Brush, before it is considered usable, there are things required that will need to be updated, such as plumbing, electrical, fixtures placed, and then the Assessor's office would be happy to reconsider it at that time. As of this time, they see it as storage.

Low commercial rating is the lowest commercial value they have as per square foot, more of a storage area. In comparison to retail commercial, retail would be usable, merchandising, and the difference in value between retail and low, with Mr. Krening estimating about \$34.00 for retail per square foot, and the warehouse area, being and they try to keep a fair adjustment between storage areas and those areas used for merchandising. Discussion followed with how it is assessed given the difference in how areas of a property are being used. Mr. Krening stated they value properties such as these in the City of Brush a little differently than a typical residential property.

Commissioner Zwetzig asked about the entire upper level being on one electrical meter, with Ms. Peterson stating that is correct and his son, who resides upstairs, pays the electricity, explaining how the billing is separated. Commissioner Teague asked about the lower level, if it is split, with Ms. Peterson stating it is not split out, stating there is not the big of a difference between the electricity for the commercial area versus the residential area, like the 28 percent difference between the commercial taxation rates versus the residential taxation rate.

She stated there is infrastructure in place such as a tub, toilet, etc. they just need to be hooked to fixtures.

Chairman Arndt stated in his mind the utility bills do not fit her argument because it is commercial downstairs and part of it is residential.

Ms. Peterson stated it was cheaper for her to fix an area in the lower level to reside there than to pay for two separate residences. Commissioner Zwetzig noted that the kilowatts used in both levels, commercial versus residential are about the same. Ms. Peterson stated that the agent from the Assessor's office could have gone inside the area they stated they could not access. Mr. Boggess stated he accepted that area as part of the residential.

Ms. Peterson referenced 39-1-103 statute, reading aloud the assessor is prohibited from changing a property's classification unless the actual use changes or the assessor discovers an incorrect classification. She stated she asked the assessor's office to show her when it changed and the assessor's agent has not shown her the information, and it is her knowledge it has always been residential and when did it change to commercial.

Mr. Krening stated they did change it from commercial to residential, all the years; the entire building has been commercial. They did not receive a permit and the City of Brush has confirmed there has not been a permit filed to change anything.

Mr. Krening further stated there are areas in Fort Morgan and areas in Brush where they are rehabbing the upstairs and mixing commercial and residential and upon being able to make those areas usable, the assessor's office will change the classification.

Commissioner Teague asked about how the property classification has been made, with Mr. Krening stated the property has always been classified as commercial and the change was made to change those areas to residential, and stated as long as he has been working for the County, that property has been commercially classified.

Commissioner Zwetzig asked Ms. Peterson if she knew when the City of Brush enacted these zoning definitions with Ms. Peterson stating she does not know, she did not ask that question. She stated there are quite a few being used in the same manner, with people living in the upper levels.

Mr. Krening stated they do review once they are aware of those properties, but there are requirements through the permit process and if they are out there, they do reassess them, and the City of Brush does send a copy of the permits to the Assessor's office.

Mr. Krening stated he would like to note that if it is changed to residential, it will increase the actual value, given residential values are higher than commercial values. What we are here to determine is whether or not the residential use is there.

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Mr. Krening stated if Ms. Peterson would like for them to return to do an inspection, he would be happy to do that, and make any changes that may be necessary.

Commissioner Zwetzig calculated the reduction of the lower commercial area, being 1,451 feet which was reduced by 674 feet, and reduced the upper level by 220 square feet, so in essence, with the appeal, it has gone from all commercial to 60 percent commercial to 40 percent residential, approximately. None of the condition was changed with Mr. Krening stated the value may have increased a little more but it is taxed at a much lower rate.

Commissioner Zwetzig stated the appeal has been in the appellant's favor, explaining the taxes went down due to the rate but the value went up, she did change what she needed to do by the appeal.

Both Commissioner Teague and Commissioner Zwetzig inquired about the way the valuation is figured, on the abstract summary with Mr. Krening summarizing how the actual value should be reviewed for a total of \$59,990.00.

Commissioner Zwetzig used the instance of when a property is classified as residential and once they are vacant, do those get changed when there is a change of use from occupied to unoccupied vacant, it does get changed to the 29 percent and Mr. Krening explained how they make those changes but they do get assessed at 29 percent. If a house was used as a residence, and it should be condemned and uninhabitable, Commissioner Teague asked if it would then be assessed at 29 percent, with Mr. Krening stating it could be as it would qualify for being assessed at 29 percent but the actual value would decrease versus what the residential value would have been.

Discussion followed regarding the upper levels of some areas, and when they became uninhabitable being assessed as commercial, with Mr. Krening stating that is correct.

Commissioner Zwetzig asked if they are really not usable, given roof leaks, and other non-use reasons, etc, but they would be assessed at the lower commercial rate, at 29 percent, with Mr. Krening stating it would typically be considered commercial, but the actual value would be lower.

Nonuse does not constitute residential use, to be classified and get the preferred assessment rate, it must be occupied by a tenant, be habitable and that would be what will qualify for the residential valuation, he further stated that if Ms. Peterson would like to go through the permitting process and make the area habitable, he would be happy to review it and make that change.

Commissioner Zwetzig noted that the assessor testified that they have gone back and the property has always been commercial for at least 30 years, and when Ms. Peterson purchased the property it was conveyed to her it was zoned but not by use, and by use it was all commercial. She stated on our tax notices; it does not have the tax rate. Commissioner Zwetzig asked if he was correct in thinking this is an occurrence that happens on residential or commercial and in this case they had a commercial occurrence once, commercial occurrence two, were those two occurrences always been commercial, with Mr. Krening stating yes. Commissioner Zwetzig stated with that information he does not believe the statute she cited would relate to this matter given that information.

Commissioner Zwetzig clarified that the assessor's office has testified, Mr. Krening believes he has been doing commercial for 30 years and he is not sure how long they can go back and check the record but it has been commercial for at least those 30 years. He stated he does not dispute Tara's recollection that it was residential use at one time, but for 30 years, it has been classified as low commercial for at least 30 years. Commissioner Zwetzig stated that with this appeal, there has been some of the property changed to residential, and she can make changes and upgrades to the upper level and then contact the assessor's office with changes.

At this time Chairman Arndt moved into discussion. Mr. Krening asked the Board to uphold the assessor's value at this time.

Commissioner Zwetzig made the motion to uphold the assessor's value and deny the petition for appeal for Tara K. Peterson, Schedule No: R001333, as recommended with Commissioner Teague seconding the motion, and motion carried 3-0.

Commissioner Teague thanked Ms. Peterson for being here today as she did bring in some valuable information and she did actually get some of the areas changed as to its actual use.

## **Wal-Mart Stores Inc** **Schedule #P015872**

Chairman Arndt noted the Board has received a request for an administrative denial at this time from appellant, and that there was no one present from Wal-Mart Stores Inc to represent this matter today. Commissioner Teague indicated an email was received on August 1, 2018 at 9:04 a.m. by Tyler Wade, representing Wal-Mart, asking for the administrative denial.

Commissioner Teague expressed her frustration that it is not required for the applicant to appear for these matters and the fact that it costs the County to have to send the matter to the State for appeal.

Karina Graulus Senior Appraiser representing the County as an agent stated that Wal-Mart feels they should have more obsolescence at the local store and they are basically taking all the stores located in Colorado and are asking them all to review their depreciation schedule which is set forth by the State of Colorado and are asking those representing them from the State of Texas who does have a faster depreciation schedule. Ms. Graulus summarized what the valuation was set at by the Assessor's office and what Wal-Mart is proposing, with that being half of what

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the Assessor has valued it at. She stated that the counties are aware that this is being taken to the State level stating probably the larger counties will proceed with this matter given there are more Wal-Mart stores and Sams' Clubs. She also stated that they did have a very difficult time receiving response from Wal-Mart regarding this matter explaining there was no response from Tyler Wade, and they have had to make numerous attempts to make contact with them and further recommended the Board uphold the value as submitted by Assessor's office at this time.

Commissioner Teague made the motion to uphold the assessor's value in the amount of \$1,227,130.00 for Wal-Mart Stores Inc. Schedule #P0115872 and accept the administrative denial that Wal-Mart has requested with Commissioner Zwetzig seconding the motion, and motion carried 3-0.

Commissioner Zwetzig asked what would happen if they did not accept the denial, and uphold the value. Mr. Krening stated essentially it is the same thing, that the County is pretty much caught in a trap and are obligated to refer the matter to the State.

There being no further business the meeting was adjourned at 10:07 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board

(Minutes ratified August 14, 2018)

**THE BOARD OF COUNTY COMMISSIONERS  
MORGAN COUNTY, COLORADO**

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s/Mark A. Arndt  
Mark A. Arndt, Chairman

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s/Laura D. Teague  
Laura D. Teague, Commissioner

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s/James P. Zwetzig  
James P. Zwetzig, Commissioner

(SEAL)

**ATTEST:**

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s/ Susan L. Bailey  
Susan L. Bailey