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Colorado: COVID-19 Did Not Trigger Revaluation of Commercial Properties

The Colorado Supreme Court recently issued multiple decisions addressing the effect of COVID-19 on commercial property tax valuations. The lawsuits were generally brought by commercial property owners alleging that the COVID-19 pandemic amounted to an "unusual condition" under Colorado's property tax law that required the county assessor to revalue their properties outside the normal two-year reassessment cycle. Under Colorado law, in determining the actual value of real property, an assessor may consider any unusual conditions in or related to any real property which would result in an increase or decrease in actual value. The statute lists out the types of unusual conditions that might result in an increase or decrease in the actual value, which include, but are not limited to, any new regulations restricting the use of land, or any detrimental acts of nature. The property owners argued that COVID-19 was a detrimental act of nature and the public health orders issued in response were regulations restricting use of their land. After state district courts ruled against the property owners, the Colorado Supreme Court accepted jurisdiction to consider how the unusual conditions exception to the two-year valuation cycle applied to the circumstances created by the pandemic during the 2020 property tax year.

The Colorado Supreme Court determined that the COVID-19 pandemic did not constitute a "detrimental act of nature." Under the law, assessors must consider "any unusual conditions in or related to any real property which would result in an increase or decrease in actual value." To fall within this provision, the unusual condition must be both an "act of nature" and "in or related to any real property." Applying the dictionary definition of "act of nature," which includes earthquakes, floods, or tornados, the court concluded that COVID-19, a respiratory disease caused by novel coronavirus, was not an act of nature related to real property. Further, requiring a mid-cycle revaluation based on a global pandemic would be absurd, both because every property would be at least indirectly affected by it, and the COVID-19 pandemic was not a one-time event such as a landslide or a fire. The court next rejected the property owners' contention that the numerous public health orders issued in response to COVID-19 constituted regulations restricting the use of their *land*. Notably, the public health orders regulated the operation of commercial activity on the land, and not the use of the land itself. As such, they were not "regulations restricting . . . the use of the land;" instead, they were restrictions on the use of the improvements on the land. Further, in the court's view, to accept the taxpayers' argument that the public health orders in this case were an unusual condition would lead to absurd results. If the COVID-19 orders were deemed regulations restricting the use of land because they required a temporary closure, then ordinary changes to fire codes affecting occupancy limits or even a routine public health order requiring the temporary closure of a particular restaurant would likewise amount to an unusual condition requiring revaluation of the property. In sum, the court

concluded that COVID-19 was not a "detrimental act of nature," nor were the public health orders passed in response "regulations restricting . . . the use of the land" as required to trigger the valuation exception. The court noted that its prior cases had similarly held that mere changes in economic conditions were not sufficient to trigger a revaluation under Colorado law, but that the impact of COVID-19 would be reflected in subsequent valuation cycles. Please contact Harley Duncan with questions on *MJB Motels LLC v. Cnty. of Jefferson Bd. of Equalization*.

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