



# STATE TAX COMMISSION OF MISSOURI

JEFFREY SILVERMAN, ) Appeal No. 21-89500  
) Parcel/locator No: 18-7.0-26-003-001-  
) 009.012  
)  
)  
Complainant(s), )  
)  
v. )  
)  
SUSAN CHAPMAN, ASSESSOR, )  
TANEY COUNTY, MISSOURI, )  
Respondent. )

## DECISION AND ORDER

Jeffrey Silverman (Complainant) appeals the Taney County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021<sup>1</sup>, was \$213,700, with an assessed value of \$68,400, classified as commercial property. Complainant alleges misclassification and asserts the subject property should be classified as 25% commercial property and 75% residential property. Complainant produced substantial and persuasive evidence to rebut the presumption that the BOE's

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<sup>1</sup> Missouri operates on a two-year reassessment cycle for valuing real property. *See* Section 137.115.1. Absent new construction or improvements to a parcel of real property, the assessment as of January 1 of the odd year remains the assessment as of January 1 of the following even year. *Id.* All statutory citations are to RSMo 2000, as amended, unless otherwise indicated.

decision was correct and to support the asserted claim of misclassification. The BOE's decision is MODIFIED.

The evidentiary hearing occurred on May 10, 2022, via WebEx. Complainant appeared pro se. Susan Chapman, Assessor, Taney County, Missouri, (Respondent) appeared in person and by counsel, Travis Elliott. Case heard and decided by Amy S. Westermann, Chief Counsel.

## **FINDINGS OF FACT**

**1. The Subject Property.** The subject property is identified by parcel/locator number 18-7.0-26-003-001-009.012. The subject property is further identified as being located at 6324 State Highway 165, #14, Hollister, Taney County, Missouri. The subject property is located in a residential neighborhood of similar type properties. The subject property is a bungalow-style single family home with four bedrooms and four bathrooms.

**2. Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$213,700, classified as commercial. The BOE determined the TVM of the subject property as of January 1, 2021, was \$213,700, classified as commercial. Complainant timely filed a Complaint for Review of Assessment with the STC alleging misclassification of the subject property.

**3. Complainant's Evidence.** Complainant testified that he purchased the subject property in October or November 2020 for approximately \$379,000. Complainant testified he did not know the classification of the property at the time he purchased it. Complainant testified that he had no opinion regarding the value of the property as of January 1, 2021. Complainant testified that he believed the property should have been classified as 25%

commercial and 75% residential according to the method the BOE had used in other appeals involving properties similar to the subject property.

Complainant introduced Exhibit A, which was the same as Respondent's Exhibit 13. Respondent objected to Exhibit A to the extent that it was offered to support a claim of discrimination but otherwise did not object to the exhibit. Complainant argued that he was not making a claim of discrimination and reiterated the claim was misclassification. The objection was overruled and Exhibit A was admitted into evidence.

Complainant testified that the subject property met the standard stated in Exhibit A, entitled "BOE Nightly Rental Decision<sup>2</sup>." Complainant testified that the subject property should have been assessed as 25% commercial and 75% residential as provided in Exhibit A. In Exhibit A, the BOE distinguished between properties where the property owner utilized the property "as a vacation home for themselves, family and friends for some portion of the year" and other properties that were "multiple homes and condominiums . . . owned by the same person, family or investment group, usually in the form of limited liability companies" where the facts made it "clear that the ownership is purely for the production of income." The BOE specifically concluded that "[w]ith respect to a non-resident owner of one home or condominium in Taney County which is utilized as a vacation home but is also offered for nightly rental, such home or condominium shall be taxed as 25% commercial and 75% residential." The BOE further concluded that "[w]ith respect to owners of multiple homes or condominiums which are all utilized for nightly

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<sup>2</sup> The "BOE Nightly Rental Decision" is attached to this Decision and Order as Appendix A.

rental . . . [the] owners of multiple nightly rental properties may designate one property in Taney County as a vacation home to be taxed as set forth above if it is put in a rental program, but all other properties owned by the same individuals and/or business entities and utilized for nightly rental in Taney County shall be taxed as 100% commercial.” (Exhibit A)

On cross examination, Complainant testified that the subject property was referred to as the Pineapple Bungalow and was listed for nightly rental on websites through a property manager. Complainant testified that the subject property was occupied between 50% and 60% of the year. Complainant credibly testified that he, his family, and his friends used the subject property for personal use when it was not booked for nightly rental. Complainant credibly testified that he personally used the subject property over 30 nights of the year, rented it as a nightly rental between 182 and 210 nights per year, allowed family members and friends to use the subject property for a total of at least 21 nights, and allowed his daughter’s Girl Scout troop to use the subject property for three nights. Complainant further credibly testified that he owned another property similar to the subject property in Taney County in 2021 and sold it in January 2022. The other property owned by Complainant had been located in the same subdivision as the subject property and had been used 100% of the year as a nightly rental property.

**4. Respondent's Evidence.** Respondent introduced Exhibits 1 through 14. Complainant did not object. Exhibits 1 through 14 were admitted into evidence. Respondent's exhibits are summarized as follows:

Exhibit 1	Photograph of front elevation of subject property while still under
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	construction.
Exhibit 2	Photograph of front elevation of subject property after construction was completed.
Exhibit 3	Rental website listing for Pineapple Bungalow on <a href="https://bransonfamilyhretreats.com/pineapple-bungalow/">https://bransonfamilyhretreats.com/pineapple-bungalow/</a> .
Exhibit 4	Rental website listing for Pineapple Bungalow on <a href="https://www.villasofdisntinction.com/vill/missouri/branson/pineapple-bungalow">https://www.villasofdisntinction.com/vill/missouri/branson/pineapple-bungalow</a> .
Exhibit 5	Rental website listing for Pineapple Bungalow on <a href="https://www.travelocity.com">https://www.travelocity.com</a> .
Exhibit 6	Screen capture of 21-89500 from STC's case management system.
Exhibit 7	Property Record Card for subject property dated March 7, 2022.
Exhibit 8	Beacon parcel map identifying subject property's location in subdivision.
Exhibit 9	2021 Real Estate Value Change Notice for subject property dated May 15, 2021.
Exhibit 10	BOE Decision Letter issued to Complainant dated April 21, 2022.
Exhibit 11	BOE 2021 Value Change Sheet dated April 12, 2022.
Exhibit 12	Screen capture of Taney County Assessor's Office computer assisted mass appraisal system data.
Exhibit 13	BOE Nightly Rental Decision
Exhibit 14	BOE Property Assessment Appeal Form for subject property.

Respondent introduced the testimony of Respondent. Respondent testified that the subject property was located in the Branson Cove subdivision and that the subject property was zoned as a nightly rental property. Respondent testified that she believed the subject property as well as all property zoned as nightly rental property should be classified as 100% commercial.

**5. Classification.** The classification of the subject property as of January 1, 2021, was 25% commercial and 75% residential because the subject property was used for more than one purpose and such uses resulted in different classifications under the plain language of Section 137.016.4 and because the BOE's determination to classify the subject property as 100% commercial was unfair, improper, and arbitrary given the terms of the "BOE

Nightly Rental Decision.”

## CONCLUSIONS OF LAW

**1. Jurisdiction.** The STC has jurisdiction to hear this appeal and shall correct any assessment or valuation that is shown to be unlawful, unfair, improper, arbitrary, or capricious. Section 138.430.1. The hearing officer shall issue a decision and order which may affirm, modify, or reverse the determination of the BOE. Section 138.431.5. Section The STC may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the STC or based solely upon evidence presented by the parties to the STC. Section 138.430.2.

**2. Assessment, Valuation, and Classification.** Real property is assessed at set percentages of its TVM as of January first of each odd-numbered year. Section 137.115.1. Residential real property is assessed at 19% of its TVM. Section 137.115.5(1)(a). Commercial real property is assessed at 32% of its TVM. Section 137.115.5(1)(c). In this case, the relevant date for determining classification is January 1, 2021.

Under Missouri law, “residential property” is defined as:

all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, manufactured home parks, bed and breakfast inns in which the owner resides and uses as a primary residence with six or fewer rooms for rent, and time-share units as defined in section 407.600, except to the extent such units are actually rented and subject to sales tax under subdivision (6) of subsection 1 of section 144.020, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, "transient housing" means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to subdivision (6) of subsection 1 of section 144.020[.]

Section 137.016.1(1).

“Commercial property” is defined as:

all real property used directly or indirectly for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of Section 4(b) of Article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term “utility, industrial, commercial, railroad and other real property”.

Section 137.016.1(3).

Section 137.016.4 provides:

Where real property is used or held for use for more than one purpose and such uses result in different classifications, the county assessor shall allocate to each classification the percentage of the true value in money of the property devoted to each use; except that, where agricultural and horticultural property, as defined in this section, also contains a dwelling unit or units, the farm dwelling, appurtenant residential-related structures and up to five acres immediately surrounding such farm dwelling shall be residential property, as defined in this section, provided that the portion of property used or held for use as an urban and community garden shall not be residential property. This subsection shall not apply to any reliever airport.

**3. Evidence.** "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 839 (Mo. banc 1977). The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015).

**4. Complainant's Burden of Proof.** The taxpayer bears the burden of proof and

must show by a preponderance of the evidence that the property was misclassified. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's classification of the subject property is presumptively correct. *Rinehart v. Bateman*, 363 S.W.3d 357, 367 (Mo. App. W.D. 2012). "Substantial and persuasive controverting evidence is required to rebut the presumption, with the burden of proof resting on the taxpayer." *Id.* (internal quotation omitted). "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is a "party's duty to convince the fact-finder to view the facts in a way that favors that party"). "Determining whether a property's use falls within one of the subclassification definitions set forth in section 137.016.1 is an issue of fact for the STC." *Rinehart*, 363 S.W.3d at 366.

**5. Complainant produced substantial and persuasive evidence of misclassification and established that the subject property's classification should have been in conformity with BOE's Nightly Rental Decision.**

In this appeal, Complainant produced substantial and persuasive evidence that the subject property should have been classified as 25% commercial and 75% residential because the subject property was used or held for more than one purpose and such uses resulted in different classifications under the plain language of Section 137.016.4 and such uses and resulting classifications were in conformity with the terms of the "BOE Nightly



Rental Decision” for similarly situated properties in Taney County. Complainant credibly testified that he and his family, friends, and his daughter’s Girl Scout troop used the subject property as a personal vacation property for part of the year and that he used the subject property as an income-producing property for part of the year. Complainant did not dispute Respondent’s evidence establishing that the subject property was rented through nightly rental websites for part of the year in order to generate income. The evidence established that the percentage of time devoted to each use could change depending on Complainant’s desire to use the subject property for himself, family, and friends. The evidence also established that Complainant owned another property in the same subdivision as the subject property during 2021 that was held out for nightly rental 100% of the time. According to the terms of the BOE’s own Nightly Rental Decision, shown in Exhibit A and Exhibit 13, owners of multiple nightly rental properties were allowed to have one personal vacation property/income-generating nightly rental property classified as both commercial and residential while all other income-generating nightly rental properties owned by the same owner would be classified as commercial property only.

Given the totality of the evidence, it is axiomatic that the subject property falls within the scope of Section 137.016.4’s plain language in that it was used or held for use for more than one purpose, i.e., for personal residential use and for income-producing commercial use, resulting in different classifications. Accordingly, the BOE should have allocated to each classification the percentage of the TVM of the subject property devoted to each use in accordance with its Nightly Rental Decision.

Although Respondent argued the subject property was zoned as a nightly rental

property and therefore was properly classified as commercial property only, this argument is neither substantial nor persuasive. Section 137.016 does not define residential or commercial property according to zoning. The only reference to zoning in section 137.016 is in the context of determining the classification of property that is “vacant, unused, or held for future use . . . or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section[.]” Section 137.016.5. Section 137.016.5 provides eight factors for classifying otherwise unclassified property. Specifically, Section 137.016.5(3) provides “a zoning classification shall not be considered conclusive, if upon consideration of all factors, the zoning classification does not reflect the immediate most suitable economic use of the property.” Section 137.016.5(3) therefore expressly contemplates classifications inconsistent with current zoning and relegates it to one of eight non-dispositive factors. *Bateman v. Rinehart*, 391 S.W.3d 441, 448 (Mo. banc 2013). Because Complainant produced substantial and persuasive evidence establishing the subject property fell within the scope of Section 137.016.4 in that it was used or held for use for more than one purpose resulting in different classifications, the fact the subject property was zoned as a nightly rental property a non-factor in this case.

Consequently, the evidence established that the BOE’s determination of classification regarding the subject property in the instant case was unfair, improper, and arbitrary in that the subject property was used for more than one purpose and such uses resulted in different classifications under the plain language of Section 137.016.4 and because the BOE’s classification of the subject property as 100% commercial was inconsistent with the BOE’s own decision regarding properties used or held for use as both

personal vacation property/income-generating nightly rental property.

### **CONCLUSION AND ORDER**

The BOE's decision is MODIFIED. The subject property is classified as 25% commercial and 75% residential, as of January 1, 2021.

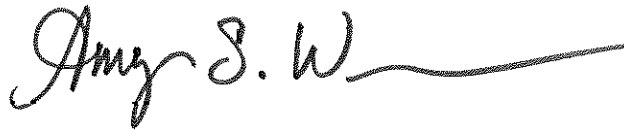
#### **Application for Review**

A party may file an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. *Failure to state specific facts or law upon which the application for review is based will result in summary denial.* Section 138.432.

#### **Disputed Taxes**

The Collector of Taney County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED December 30, 2022.  
STATE TAX COMMISSION OF MISSOURI



Amy S. Westermann  
Chief Counsel

Appendix A

**BOE NIGHTLY RENTAL DECISION**

BACKGROUND

This Board of Equalization (BOE) is tasked with determining an issue which has a scope well beyond the borders of our county. Our volunteer citizen board, appointed by the county commission, acts as an independent panel to review tax appeals by Taney County citizens who take issue with the decision of the county assessor's determination as to their appraised value, or as in this circumstance, the classification of their real property.

While the recent trend of utilizing homes in residential neighborhoods for the purpose of nightly rental is happening all around the country, perhaps nowhere has the issue become more polarizing than in our small county in southern Missouri. Branson and the surrounding area have more hotel/motel rooms than many of the metropolitan areas in this country. For years these businesses have serviced the millions of tourists that stay overnight in our county, and those same businesses now face a burgeoning number of citizens and investors who utilize single-family homes and condominium units to offer nightly rental accommodations for many of those same visitors to the Branson area.

While hotels/motels have long been subject to a classification of "commercial" for real property tax purposes, single-family residences and condominiums which have been utilized for nightly rental have largely been taxed at the residential rate. The Assessor now seeks to re-classify all those properties as "commercial" and therefore subject them to the higher rate.

Under previous Assessors, most taxpayers who reported that their property was being used for nightly rental were given a "mixed-use" classification. The Assessor relied upon taxpayer self-reporting of the number of nights actually

utilized for nightly rental, and that portion of the tax year was taxed at the commercial rate. Due to the reclassification to entirely "commercial", and an across the board factor increase applied to residential properties, this BOE now faces a record number of tax appeals.

Members of this board have consulted with legal counsel, assessors and BOE members from other Missouri counties, as well as the Missouri State Tax Commission in order to obtain information and various points of view on this issue. During the appeals process, we have heard from hotel owners, commercial property developers and real property investors who have multiple properties in nightly rental programs, as well as property owners who have one property which they use as a vacation home and also put the property into a nightly rental program. Various allegations have been made as to the motivations driving the proposed classification changes, but both sides to this issue can be said to have their own financial and/or political motivations, which is largely irrelevant to this Board. Good people on both sides of the issue have presented their case through their appeal, and it is the duty of this board to make a decision based on the facts presented and the law applicable to this issue.

## DISCUSSION

Taney County is home to a large number of people who feel strongly that government and taxation should be minimized. The members of this Board are all long-time residents of the county and share many of the same sentiments. We all want to be free to utilize our homes and property as we see fit with minimal interference. With this said, it is the function of our Board to treat ALL the citizens of this county as fairly as we can, and to "equalize" the tax impacts imposed on county taxpayers.

The fundamental argument in favor of the reclassifying nightly rental properties as "commercial" for tax purposes is that a home or condominium is being used to produce a profit for the owner, and is therefore not fundamentally different from a hotel or motel owner renting a room or rooms, and both are simply providing "transient" accommodations as opposed to long-term rental. This Board certainly does not view its function as to help protect hotel/motel owners from an emerging competitor, we only seek to ensure that both of these groups are treated fairly from a tax perspective.

This Board has heard from numerous property owners who offer nightly rental, and the vast majority of those have focused on the issue of zoning, arguing that their property is zoned as residential and therefore their real property tax classification should also be residential. Indeed, many of these same taxpayers have provided citations to caselaw in which courts have found that nightly rental did not qualify as a commercial use under various local ordinances and owner association restrictive covenants, and therefore did not violate those covenants or ordinances. In this line of cases the association or city was seeking to stop the owner from utilizing a home or condominium for nightly rental, but none directly address the issue of taxation of those properties. While the law certainly appears to say that nightly rental can be conducted in a property which is zoned as residential, where covenants and ordinances allow, to say this also applies to the property's classification for tax purposes would leave the tax classification to the Planning and Zoning Board or the Board of Adjustment, instead of the Assessor and the BOE.

In addition to zoning, nightly rental owners also point to the differences in the product being sold to the consumer. Although both a homeowner and a hotel owner charge a fee for overnight accommodations, the homeowner argues that no on-site amenities such as a restaurants, vending machines, etc. are provided for sale to the guest other than the home itself. Indeed, some hotels offer extensive amenities, while some do not, just as some homes have extensive amenities, while some do not. Nightly rental owners also point out that with hotels, some amenities are for sale and are subject to sales tax, while others are simply part of the nightly room rate. The Board does not find these differences as conclusive.

The most persuasive argument for a tax classification of "residential" with respect to nightly rental is that often, if not in most cases, the owner utilizes the home or condominium as a vacation home for themselves, family and friends for some portion of the year, though usually only for a short period. In such cases, this Board finds it pivotal that the nightly rental is more incidental to the actual use by the owner, family and friends. This distinction fades quickly when multiple homes and condominiums are owned by the same person, family or investment group, usually in the form of limited liability companies, and it becomes clear that the ownership is purely for the production of income.

Thus far the legislature has failed to formulate any legislation to address the issue facing this Board, although we have been informed that at least a few

attempts have been made but without a result. Guidance from other states can be difficult to apply here, not only because of the relative uniqueness of our county's situation, but because their tax laws differ from Missouri. The often cited *Shipman* case from the Missouri Supreme Court dealt with a Marriot hotel property and held that the "availability" of the rooms more than half the year classified the property as commercial for tax purposes. The Board finds that case distinguishable at the very least in the case of a property purchased as a vacation home that produces nightly rental income on occasion, even if it happens to be in a rental program year-round.

## DECISION

Nothing we formulate here will ever be perfect for every situation, and indeed we fully expect, due to the diversity of opinions on the issue before us, that our decision will be appealed to the State Tax Commission and perhaps ultimately to the Missouri Supreme Court. All we can do is attempt to fulfill our obligations as members of this BOE and attempt to come up with something reasonable and fair considering everything that has been presented to us over the last several weeks of tax appeals.

To clarify, our decision has no effect whatsoever on individuals or companies that own residential properties which are utilized as a residence, for long term rental (30 days or more), or a vacation home, so long as such properties are not put into a nightly rental program.

With respect to a non-resident owner of one home or condominium in Taney County which is utilized as a vacation home but is also offered for nightly rental, such home or condominium shall be taxed as 25% commercial and 75% residential. The Board perceives that this classification covers most of the nightly rental properties in the county. This "mixed use" classification eliminates the self-reporting of actual nights rented and relieves the Assessor of the practical difficulty of having enough funds to hire staff to handle all of the self-reporting of the past, so those resources can be directed toward the duties of reassessment.

With respect to owners of multiple homes or condominiums which are all utilized for nightly rental, we can find no decisive difference, other than physical appearance and structure, from that of a hotel or motel. Both are being used exclusively to generate an income from transient housing and this Board must

fulfill its obligation to try and equalize similar properties.

Therefore, owners of multiple nightly rental properties may designate one property in Taney County as a vacation home to be taxed as set forth above if it is put in a rental program, but all other properties owned by the same individuals and/or business entities and utilized for nightly rental in Taney County shall be taxed as 100% commercial.

For properties designated as 100% commercial due to nightly rental, the Assessor is directed to use the commercial factor for any rate increases instead of the residential factor.

Any nightly rental property owners which received a notification of increased appraised value from the Assessor, the amount designated on the original notice shall be set as their appraised value for 2021, unless such value was appealed and further reduced by the BOE this session, and further any notification of appraised value sent to a nightly rental owners after June 15, 2021, shall be void in accordance with statute.

#### MOTION

With respect to a non-resident owner or owners of one home or condominium in Taney County which is utilized as a vacation home but is also offered for nightly rental, such home or condominium shall be classified as 25% commercial and 75% residential. With respect to owners of multiple homes or condominiums which are all utilized for nightly rental, such owners may designate one property in Taney County as a vacation home to be classified as set forth above, but all other properties which are utilized for nightly rental in Taney County and owned by the same individuals and/or business entities with common owners shall be classified as 100% commercial.

For properties designated as 100% commercial due to nightly rental, the Assessor is directed to use the commercial factor for any rate increases instead of the residential factor.

With respect to any nightly rental property owners which received a notification of increased appraised value from the Assessor, the amount designated on the original notice shall be set as their appraised value for 2021, unless such value was appealed and reduced by the BOE this session, and further, any notification of an increase in appraised value sent to a nightly rental owners after June 15,

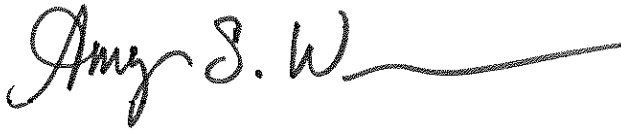


2021, shall be void in accordance with statute.

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on December 30, 2022, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

A handwritten signature in black ink that reads "Amy S. W" followed by a long, horizontal, wavy flourish.

Amy S. Westermann  
Chief Counsel