ADVANCE SHEET HEADNOTE
May 30, 2023

2023 CO 28

No. 22S800, *1303 Frontage Holdings LLC v. Larimer Cnty. Bd. of Equalization*—Property Taxation—Unusual Conditions—Assessment Date—Commercial Property—Taxpayer Standing—Statutory Interpretation—COVID-19—Public Health Orders.

In this case, the supreme court considers whether commercial taxpayers have a statutory right to compel county tax assessors to revalue their properties for 2020 when COVID-19 and the public health orders that followed in March 2020 allegedly decreased their property values. Because article 1 of title 39 defines January 1 as the annual assessment date for Colorado's biennial property tax system for all provisions in the tax scheme except where the legislature expressly specifies an exception, the court concludes they do not. The court further holds that to compel a property tax revaluation in the intervening year, that is, the second year in the tax reassessment cycle, the taxpayer bears the burden of proving that an unusual condition existed under section 39-1-104(11)(b)(I), C.R.S. (2022), impacted their property, and that the assessed value was incorrect. Consistent

with the court's decisions today in *MJB Motels, LLC v. Cnty. of Jefferson Bd. of Equalization*, 2023 CO 26, __ P.3d __, and *Hunter Douglas Inc v. City & Cnty. of Broomfield Bd. of Equalization*, 2023 CO 27, __ P.3d __, the court also concludes that COVID-19 and the public health orders that followed did not qualify as unusual conditions under section 39-4-104(11)(b)(I). Accordingly, the supreme court reverses the district court's order and remands for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 28

Supreme Court Case No. 22SC800
C.A.R. 50 Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA1191
Larimer County District Court Case No. 20CV30613
Honorable Daniel McDonald, Judge

Petitioners:

Larimer County Board of Equalization (BOE) and Larimer County Assessor, Bob Overbeck,

v.

Respondents:

1303 Frontage Holdings LLC; 1411 East Magnolia Street LLC; 1497 E Eisenhower LLC; 3470 Holdings LLC; 3760 E 15th LLC; 3985 Lincoln LLC; 3BM LLC; 4103 S Mason Street LLC; 4211 S Mason Street LLC; 790 Eisenhower LLC; Adams Bank and Trust; Advance Tank and Construction Co; Allen Marion T Jr Revocable Trust; Alteo Ltd; Apropo Inc; Associates Investments LLC; Associates South; Baretta Investments LLC; Boeing Drive Investments LLC; Bohlender Funeral Chapel Inc; BS Holdings Inc; Byrd Drive LLC; Canvas Credit Union; Caribou Chalet Inc; Cascade Falls Property Group LLC; CF Hospitality Inc; Citizen Printing Co; Cortina Real Estate LLC; Crashway Limited Liability Co; D and N Houska Family LLC; Early Education Enterprises LLC; Edge Air Inc; Ensign Properties LLC; First Interstate Bank of Ft Collins C/O; First National Bank of Omaha; First National Bank C/O First National Bank of Omaha; First Natl Bank In Ft Collins C/O First National Bank of Omaha; Flatirons Hospitality LLC; Fraley Holding Company LLC; Gateway Medical Services LLC; GEA LLC; Glacier Lodge L P; Granite Trust and Faith LLC; Graves Avenue Plaza LLC; Greenlee Investments LLLP; Hana Dul Inc; Harmony Suites LLC; Hogan Family

Partnership LLLP C/O First National Bank of Omaha; Horsetooth Associates LLP (.50); Horsetooth Investors LLLP; K and H Family Properties LLC; Kauffman Investments LLC; Kauffman Rentals Inc; Kira Enterprises LLC; Kropp Frederick L/Pamela J; Lasar Properties LLC; Mackenzie Properties LLC; MBR Investments LLC; Next Generation Properties of Nebraska LLC; Nordhagen Land Company LLC; Pizza Ranch RE1 LLC; Poche Linda/Richard M; Poudre Valley Cooperative Assn Inc; Precision Technology LLC; Quickert Properties LLC; Racquette Hanger LLC; Raise the Roof LLC; RMVFNB LLC; Sachanandani Hari and 6701 Marketplace Drive LLC; Saddlenotch LLC (.50) Mesa Partners LLC (.50); Shelhill Investments LLC; Silvertip Realty LLC; Springer Investment Group LLC; SRP Enterprises LLC; Stockton LLC; SUH Property Inc; Texas Roadhouse Holdings LLC; Timberline Associates; United Land Investments LLC; V and S Partnership; Wagner Equipment Co; Walker Manufacturing Co; Weisser R James, Robert W and Poudre Valley Air Inc; Wellington Resources LLC; Wiege Michael W Terri G; Willco V Development LLLP; Willco VI Development LLLP; Willco VII Development LLLP; Willco XII Development LLLP; and Zephyr Grafix Inc.

Order Reversed
en banc
May 30, 2023

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 This is one of eleven similar cases filed in the fall of 2020 by the owners of hundreds of commercial properties in eleven different Colorado counties seeking to compel the assessors in each of the counties to revalue their properties and lower their property tax assessments for the 2020 tax year. This matter involves the valuation of 130 parcels of commercial property in Larimer County. The taxpayers here—and in the other cases—contend that various orders issued by Governor Jared Polis, the Colorado Department of Public Health & Environment, and the Larimer County Department of Health and Environment (collectively "public health orders") in response to the COVID-19 pandemic constitute unusual conditions that decreased the value of their properties in 2020.

¶2 Today, we decide four cases addressing the application of the "unusual conditions" exception, § 39-1-104(11)(b)(I), C.R.S. (2022), to the circumstances that COVID-19 created in Colorado during the 2020 property tax year. *See Educhildren LLC v. Cnty. of Douglas Bd. of Equalization,* 2023 CO 28, __ P.3d __; *MJB Motels LLC v.*

Cnty. of Jefferson Bd. of Equalization, 2023 CO 26, __ P.3d __; *Hunter Douglas Inc. v. City & Cnty. of Broomfield Bd. of Equalization*, 2023 CO 27, __ P.3d __.[1]

¶3 We accepted jurisdiction in this case to address (1) when a county tax assessor must revalue properties based on unusual conditions, (2) what the burden of proof is in this type of case, and (3) whether the public health orders issued in response to COVID-19 in 2020 constituted unusual conditions.

¶4 We now conclude that article 1 of title 39 does not require an assessor to revalue real property when an unusual condition occurs—as here—in the middle of a tax year. Rather, an unusual condition that occurs after the January 1 tax assessment date is properly considered in the next property tax year. Because the taxpayers sought revaluation in 2020 based on alleged unusual conditions that occurred *after* January 1, 2020, the district court erred in granting the taxpayers' motion for summary judgment. We emphasize that this does not mean that the economic impact, if any, of COVID-19 and the public health orders that followed will not be considered; rather any impact will be reflected in connection with the regular January 1, 2021 and January 1, 2023 tax assessment processes.

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[1] In *MJB Motels*, ¶ 3, and *Hunter Douglas*, ¶ 3, we address whether COVID-19 and the public health orders that followed constitute unusual conditions for the purpose of section 39-1-104(11)(b)(I), and we conclude that they don't.

¶5 We further hold that taxpayers bear the burden of proving that an unusual condition existed before the pertinent January 1 assessment date, the unusual condition impacted their properties, and that the assessed value of their properties was thus incorrect. But we also conclude, consistent with our opinions announced today in *MJB Motels*, ¶ 3, and *Hunter Douglas*, ¶ 3, that COVID-19 was not a "detrimental act[] of nature," and the orders issued in response to COVID-19 were not "regulations restricting . . . the use of the land" and, as such, did not trigger property revaluations in Larimer County in 2020.

¶6 We therefore reverse the district court's order and hold that the taxpayers do not have the statutory right to property tax revaluations for the 2020 tax year.[2]

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[2] We accepted jurisdiction under C.A.R. 50 to review the following issues:

1. Whether the District Court erred in concluding, as a matter of law, that under C.R.S. § 39-1-104(11)(b)(I) an assessor must take into consideration unusual conditions that occur after the assessment date of January 1, 2020, for a revaluation for the 2020 tax year.
2. Whether the District Court erred in concluding, as a matter of law, under C.R.S. § 39-1-104(11)(b)(I) property owners are not required to demonstrate that the alleged unusual conditions caused a diminution in value to their properties before triggering the duty of assessor to revalue such properties.
3. Whether the District Court erred in concluding, as a matter of law, the executive and public health orders issued by the State and County are "regulations of the use of land" and therefore an "unusual condition" pursuant to C.R.S. § 39-1-104(11)(b).

I. Background

¶7 The Colorado Constitution lays the foundation for taxing real and personal property in our state. Colo. Const. art. X, § 3; *see also Lodge Props., Inc. v. Eagle Cnty. Bd. of Equalization*, 2022 CO 9, ¶ 27, 504 P.3d 960, 965. Following this constitutional prescription, the General Assembly codified various processes and procedures for the taxation of real property in title 39, articles 1 through 14. It also charged the Colorado Property Tax Administrator ("Administrator") with administering the state's property tax laws, including all aspects of property valuation and assessment, § 39-2-109, C.R.S. (2022).

¶8 Under this framework, all taxable real property within the state must be listed, appraised, and valued for assessment in the county where it is located on the annual "assessment date," which is twelve noon on the first day of January of each year. § 39-1-105, C.R.S. (2022). The annual January 1 assessment date is a critical part of Colorado's property tax assessment process. It enables assessors

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4. Whether the District Court erred in concluding, as a matter of law, that a Plaintiff is not required to demonstrate the Assessor's value for the subject properties was incorrect.
5. Whether the District Court erred in concluding, as a matter of law, that if an unusual condition does exist, the Plaintiff is not required to demonstrate that the unusual condition impacts the subject properties.

and taxpayers alike to meet an extensive schedule of statutory deadlines related to Colorado's property tax assessment system, ultimately leading to the levy of property taxes by each county. These taxes are then used by taxing authorities to help guide various budgeting decisions and ultimately pay for a wide range of costs and services from firefighting to road repair.

¶9 To comply with the annual assessment date deadline, the assessor in each county is responsible for determining the "actual value" of real property in their county. § 39-1-103(5)(a), C.R.S. (2022). Assessors then use that actual value to determine a "valuation for assessment" upon which property taxes are levied. *See* § 39-1-104(1.8)(b).

¶10 But assessors do not appraise real property every year. This is because the General Assembly created a two-year "reassessment cycle" in which actual value is determined every other year. § 39-1-104(10.2). Under this biennial system, the actual value for a property assessed as of January 1 in an odd-numbered year is automatically carried forward—without further valuation—as the actual value of the property as of January 1 in the next, even-numbered year. Thus, if a property is valued at $400,000.00 as of January 1, 2019, its level of value as of January 1, 2020, would also be $400,000.00.

¶11 Notably, the reassessment cycle is also backward-looking. This means the assessor's goal is not to find the value of the property for the first year of the

reassessment cycle (i.e., as of the January 1 assessment date in each odd-numbered year). Rather, actual value is based on data gathered during the eighteen-month base period "immediately prior to July 1 immediately preceding" the first year of the reassessment cycle. § 39-1-104(10.2)(d). This backward-looking actual value is known as the "level of value." *Id.* This level of value is the amount used to calculate the property tax assessment for the first (odd) year *and* the second (even) year in each reassessment cycle. *Thibodeau v. Denver Cnty. Bd. of Comm'rs*, 2018 COA 124, ¶ 9, 428 P.3d 706, 709; § 39-1-104(10.2)(a).[3]

¶12 What this statutory scheme means for the years that are pertinent to this case is that the level of value for the 2019 tax year and the 2020 tax year for real property in Larimer County was determined based on data gathered between January 1, 2017, and June 30, 2018. And, as noted, because our system is biennial,

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[3] The property tax levied on a parcel of commercial property is the product of the county mill levy, the commercial assessment ratio, and the level of value. *See* § 39-1-104(1.8); *see, e.g.*, *Colorado Real & Personal Taxes*, Metro Denver Econ. Dev. Corp., https://www.metrodenver.org/do-business/taxes-and-incentives/property-taxes [https://perma.cc/LQV3-HHJC]. Because a taxpayer's tax liability is directly related to the level of value of their property and the other two factors are fixed for a given reassessment cycle, an increase or decrease in the level of value is the key factor in determining a taxpayer's property tax bill. *See* § 39-1-104(1.8); *see, e.g.*, *Colorado Real & Personal Taxes*, Metro Denver Econ. Dev. Corp., https://www.metrodenver.org/do-business/taxes-and-incentives/property-taxes.

the same level of value was used for the January 1, 2019 assessment date and the January 1, 2020 assessment date.

¶13 The following chart illustrates the backward-looking, ongoing nature of this system:

Base Period Used to Determine Actual Value for Assessment Dates	**Assessment Dates in the Two-Year Reassessment Cycle**	
January 1, 2017 through June 30, 2018	January 1, 2019	January 1, 2020
January 1, 2019 through June 30, 2020	January 1, 2021	January 1, 2022
January 1, 2021 through June 30, 2022	January 1, 2023	January 1, 2024

¶14 Importantly, once the level of value for a particular property is established for the two-year reassessment cycle, Colorado law does not authorize an assessor to revalue that property until January 1 of the next two-year reassessment cycle, subject to certain very limited exceptions. These exceptions include the total destruction of property, § 39-1-123, C.R.S. (2022), unusual conditions, § 39-1-104(11)(b)(I), and clerical error, *see Thibodeau*, ¶ 12, 428 P.3d at 709. Thus, once the levels of value for the taxpayers' properties here were established for the January 1, 2019 assessment date and that value was carried forward to the January 1, 2020 assessment date, the Larimer County Assessor ("Assessor") could not revalue and reassess those properties, except under certain narrow exceptions that are explicitly described in the property tax statutes.

¶15 In addition to the January 1 assessment date, the statutory scheme specifies *annual* deadlines for the tax assessors that inform and allow taxpayers to make timely objections to their property tax assessments for that year. *See* §§ 39-5-121 to -122, 39-8-107 to -108, C.R.S. (2022). Among others dates, these statutory deadlines require that: (1) assessors mail notices of valuation to real property owners by May 1 of each year, § 39-5-121(1)(a)(I), C.R.S. (2022); (2) property taxpayers file objections to the assessors' valuations by June 8 of each year, § 39-5-122(1)(a), C.R.S. (2022); (3) assessors issue notices of determination to the boards of equalization by July 15 of each year in response to taxpayers' objections, § 39-5-122(2.5);[4] (4) the boards of equalization issue final decisions as to taxpayers' objections regarding their assessments by August 5 of each year, § 39-8-107(2)(a), C.R.S. (2022);[5] and (5) taxpayers must appeal boards of equalization final decisions within thirty days to the district court for that county or the State Board of Assessment Appeals, or they must enter binding arbitration, § 39-8-108(1), C.R.S.

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[4] Fifteen counties have expanded appeal periods that extend this date to September 15. 2 Colo. Div. of Prop. Tax'n & Dep't of Loc. Affs., *Assessors' Reference Library: Administrative & Assessment Procedures Manual* ("2 ARL") 2.36, 2.52, 2.66 (Rev. Mar. 2023).

[5] In the fifteen counties that have expanded appeal periods, the final decision date is extended to November 1. 2 ARL 2.43.

(2022). These annual statutory dates are to be "strictly construed," § 39-1-101, C.R.S. (2022).

¶16 The dispute here centers on the "unusual conditions" exception. It states:

> The provisions of subsection (10.2) of this section are not intended to prevent the assessor from taking into account, in determining actual value for the years which intervene between changes in the level of value, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value.

§ 39-1-104(11)(b)(I). The statute goes on to provide:

> If any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value; however, the assessor shall not revalue such property above or below its correct level of value except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition. . . . When taking into account such unusual conditions which would increase or decrease the actual value of a property, the assessor must relate such changes to the level of value as if the conditions had existed at that time.

§ 39-1-104(11)(b)(I); *see also Thibodeau*, ¶¶ 12–13, 428 P.3d at 709–10. Unusual conditions explicitly include, among other things, remodeling of a structure and damage short of the total destruction of a property due to a fire or an explosion. § 39-1-104(11)(b)(I).

¶17 One of the benefits of this biennial property tax system is that taxpayers benefit from a lower valuation when property values increase over time. Conversely, in those years when property values decreased after the eighteen-month base period, the county benefits from a higher valuation.

¶18 But what happens if something occurs—in the middle of a tax year—that allegedly significantly changes the actual value of real property after it has already been assessed? That, among other things, is what this case is about.

II. Facts and Procedural History

¶19 The petitioners in this case are ninety-seven individuals and entities that pay property taxes for 130 parcels of real property located in Larimer County. They purportedly own or operate a variety of businesses in the County.[6] The taxpayers alleged that their businesses suffered adverse economic consequences as a result of the public health orders related to COVID-19. Because of these economic losses, the taxpayers asserted that their property values decreased such that the levels of value reflected in their January 1, 2020 tax assessments were incorrect. So, they appealed to the Assessor, Bob Overbeck, demanding that he immediately revalue their commercial property and, in turn, decrease their property tax assessments for that year.

¶20 Specifically, the taxpayers argued that COVID-19 and the public health orders issued in response were unusual conditions under section 39-1-104(11)(b)(I), obligating the Assessor to revalue their properties. The

[6] The information in this section is based on the allegations in the underlying complaint.

Assessor denied their requests, however, on the ground that the unusual condition triggering revaluation must have occurred *before* the January 1, 2020 assessment date applicable to that year. In other words, revaluation was not required for an unusual condition that occurred *during* the 2020 tax year. Thus, the Assessor concluded that because the alleged unusual conditions occurred beginning in March 2020—well after the January 1, 2020 assessment date—it would not trigger a revaluation, but rather would be considered during the next base period—that is, the January 1, 2019, through June 30, 2020, base period used to value property for the January 1, 2021 and January 1, 2022 reassessment cycle.

¶21 In August 2020, the Larimer County Board of Equalization similarly denied the taxpayers' appeal for a mid-year revaluation, concluding that the properties were fairly and equitably valued. Having exhausted all administrative remedies, the taxpayers sought relief in district court.

¶22 Larimer County moved for a determination of a question of law under C.R.C.P. 56(h). The next day, the taxpayers filed a motion for summary judgment, and the County filed a cross-motion for summary judgment soon thereafter. The County sought summary judgment on three grounds: (1) the COVID-19 pandemic is not an unusual condition for purposes of section 39-1-104(11)(b)(I), (2) the public health orders identified in the complaint are not regulations restricting the use of

the land, and (3) the taxpayers seeking revaluation must prove a change in their property value.

¶23 Ruling first on the County's motion for determination of law, the district court held that title 39 allowed the Assessor to consider an unusual condition that occurred after the January 1, 2020 assessment date to be taken into consideration for the 2020 tax year. Then, the district court granted the taxpayers' motion for summary judgment. Referencing its ruling on the County's motion for determination of law, the court first concluded that unusual conditions that occurred after January 1, 2020, did require a revaluation and reassessment *during* the 2020 tax year. The court further explained that "[c]onstruing the [unusual conditions] statute to require the taxpayer to prove diminution of value before the assessor is required to reassess the value is contrary to the intent" of the statute. And so, the court concluded that section 39-1-104(11)(b)(I) does not require each taxpayer to show a diminution in property value to trigger reassessment. It was persuaded, however, that the taxpayer had to prove an unusual condition. Finally, the district court determined that COVID-19 and resulting public health orders qualified as unusual conditions, reasoning that COVID-19 constituted a "detrimental act of nature" and that the public health orders "restrict[ed] . . . the use of the land."

¶24 Larimer County appealed. Three divisions of the court of appeals filed a motion with this court to determine jurisdiction for this case and its three companion cases. § 13-4-110, C.R.S. (2022). We granted that motion.

III. Analysis

¶25 We begin by explaining our jurisdiction to hear this case and then turn to the applicable standards of review. Next, we lay out the constitutional and statutory provisions governing Colorado's biennial real property tax scheme and our precedent interpreting them. We then apply these principles to the issues before us in this case.

¶26 To do this, we first discuss when Colorado's property tax scheme compels a county tax assessor to revalue property that has changed in value due to an unusual condition. Second, we define taxpayers' burden of proof when they appeal their property tax valuations to the district court and then turn to the question of which party has the burden of proving diminution of the subject property value due to an unusual condition. And, finally, we consider whether the district court erred in concluding, as a matter of law, that COVID-19 was a "detrimental act[] of nature" and the resulting public health orders were "regulations restricting . . . the use of the land" and therefore "unusual conditions" pursuant to section 39-1-104(11)(b)(I).

A. Jurisdiction

¶27 Pursuant to sections 13-4-109 to -110, C.R.S. (2022), and C.A.R. 50(a), the court of appeals moved to determine jurisdiction in this case and its three companion cases. The divisions reasoned that we should accept jurisdiction because (1) eleven similar pending cases involve "dozens of plaintiffs and multiple boards of equalization" affording the issues "significant public interest" since the remedy could have a broad effect on taxable property, § 13-4-109(1)(a), C.R.S. (2022); (2) construing "regulations restricting . . . the use of the land," § 39-1-104(11)(b)(I), carries significant legal implications for the relationship between land use regulation and public health, § 13-4-109(1)(b); and (3) judicial economy and consistency demand it, § 13-4-109(1)(c). We agreed and therefore granted the divisions' motion.

B. Standard of Review

1. Summary Judgment

¶28 This case comes to us for review of the district court's entry of summary judgment in favor of the taxpayers. "We review an order granting summary judgment de novo." *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 2020 CO 51, ¶ 19, 467 P.3d 287, 291. Summary judgment is proper when there is no genuine issue of material fact and the "moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c). "In considering whether summary judgment is proper, a

court grants the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolves all doubts against the moving party." *Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 15, 441 P.3d 1012, 1016. The nonmoving party, however, must provide the court with evidence of genuine issues of factual discrepancy. *Id.*

2. Statutory Interpretation and Principles of Statutory Construction

¶29 This case also presents issues of statutory interpretation. Statutory interpretation is a question of law that we review de novo. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389. When we construe a statute, our primary task is to effectuate the legislative intent. *Colo. Prop. Tax Adm'r v. CO_2 Comm. Inc.*, 2023 CO 8, ¶ 22, 527 P.3d 371, 375. In so construing, "we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts," and give "words and phrases . . . their plain and ordinary meanings." *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2017 CO 107, ¶ 22, 408 P.3d 836, 840. If the statutory language is clear and unambiguous—in other words, not susceptible to multiple interpretations—we look no further. *CO_2 Comm.*, ¶ 22, 527 P.3d at 376. "However, where the language is ambiguous we may consider other aids to statutory construction, such as the consequences of a given construction, the end to be achieved by the statute, and legislative history." *Bostelman v. People*, 162 P.3d 686,

690 (Colo. 2007). Further, we avoid constructions that would lead to illogical or absurd results. *People in Int. of A.C.*, 2022 CO 49, ¶ 10, 517 P.3d 1228, 1233–34.

¶30 As part of our de novo review, we may also defer to an administrative agency's reasonable interpretation of the statute it's charged with administering. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶ 7, 327 P.3d 232, 235. But we "are not bound by [an] agency's interpretation," and deference is unwarranted when that interpretation contravenes the statute. *BP Am. Prod. Co. v. Colo. Dep't of Revenue*, 2016 CO 23, ¶ 15, 369 P.3d 281, 285. The rules of statutory construction also apply to administrative regulations. *CO_2 Comm.*, ¶ 22, 527 P.3d at 376.

C. Timing of an Unusual Condition Required to Trigger a Statutory Revaluation

¶31 We begin by considering *when* an assessor must revalue property based on an unusual condition.

¶32 The taxpayers contend that section 39-1-104(11)(b)(I) requires immediate revaluation whenever a taxpayer asserts an unusual condition has occurred. They argue that an unusual condition must be considered at any time during the two-year reassessment cycle. Thus, according to the taxpayers, the district court properly concluded that COVID-19 and the public health orders that followed triggered the "unusual conditions" exception in 2020 for the 2020 tax year. In the taxpayers' view, an unusual condition that occurred in 2019 would trigger revaluation, then reassessment and a corresponding property tax decrease (or

increase) in 2019. The same reasoning, the taxpayers argue, applied to 2020 and required revaluation and corresponding property tax cuts in the 2020 tax year. In support of this argument, the taxpayers point to language in section 39-1-104(11)(b)(I):

> The provisions of subsection (10.2) of this section are not intended to prevent the assessor from taking into account, in determining actual value for the *years which intervene* between changes in the level of value, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value.

(Emphasis added.)

¶33 They posit that the use of the plural phrase "years which intervene" signals that an unusual condition that occurs during either year of the two-year reassessment cycle can trigger the exception. The taxpayers also argue that the County's interpretation of the statute reads words into the exception that are not there—like "the January 1 assessment date,"—while disregarding words like "years," which are included in the exception. Thus, in the taxpayers' view, the public health orders issued in response to the pandemic required the Assessor to revalue their properties and reduce their property tax assessments in the middle of the 2020 tax year.

¶34 Larimer County counters that the "unusual conditions" exception must be considered in light of Colorado's property tax scheme as a whole. It asserts that the exception is cabined by the two-year reassessment cycle and anchored by the

January 1 annual assessment date. Thus, property cannot be revalued or reassessed *during* a tax year unless the property tax statute explicitly allows it.

¶35 Larimer County acknowledges that the limited exception carved out for unusual conditions in section 39-1-104(11)(b)(I) contemplates revaluation of property outside the eighteen-month base period. It asserts, however, that the taxpayers' reading of the term "years" to allow reassessments based on unusual conditions that occur any time during the entire two-year reassessment cycle is misplaced and unmoored from the purpose and design of the property tax statutes. The taxpayers' interpretation of the "unusual conditions" exception, the County argues, would require constant revaluation and reassessment, and upend Colorado's predictable and stable property tax scheme. The County further counters that section 39-1-104(11)(b)(I) does not allow for revaluation and a decrease or increase in a tax assessment based on an unusual condition that occurs *during* any tax year, including an "intervening tax year," which it defines as the second, even-numbered year in the two-year reassessment cycle.

¶36 In the County's view, the annual January 1 assessment date applies to section 39-1-104(11)(b)(I) and requires that an unusual condition can only be properly taken into account in the tax year that follows the unusual condition. It is not considered in the year in which the unusual condition occurs. This means that an unusual condition that occurs in the first, or odd-numbered, year of the

two-year reassessment cycle must be taken into account during the second, or even-numbered, year of that reassessment cycle. And if an unusual condition occurs in the second year of the reassessment cycle, it would not require a revaluation *during that same tax year* but, rather, would be considered in the *next* two-year reassessment cycle.

¶37 Thus, if a taxpayer proved an unusual condition occurred in the 2019 tax year, any decrease or increase in their property's value would be reflected in the *next* tax year, i.e., if the level of value decreased or increased, the assessment would change and be reflected in the January 1, 2020 tax assessment. And, in the County's view, an unusual condition that occurred in the 2020 tax year, which decreased or increased property values, could also not be considered in that same tax year. Rather, an unusual condition in 2020 would be captured as part of the base period for the next two-year reassessment cycle and, if not, as an unusual condition occurring between July 1, 2020, and December 31, 2021, that would trigger revaluation for the 2021 and/or 2022 tax years. This reading of the statute, the County argues, makes clear that the impact of COVID-19 (the onset of which was first widely understood in approximately March 2020), if any, will be reflected, if at all, in the assessment process for the 2021-2022 reassessment cycle or as an unusual condition occurring between July 1, 2020, and December 31, 2021. It also squares, in its estimation, with the General Assembly's intent in crafting the

annual January 1 assessment dates and the predictable, stable property tax process those dates anchor. The following table illustrates the County's argument:

Base Period January 1, 2017 to June 30, 2018	**Odd Assessment Year** January 1, 2019	**Even Assessment Year** January 1, 2020
Unusual condition in the second half of 2018	Considered in January 1, 2019 tax assessment	
	Unusual condition in 2019	Considered in January 1, 2020 tax assessment
		Unusual condition in mid-2020 Considered as part of the January 1, 2019 to June 30, 2020 base period for the next January 1, 2021 and January 1, 2022 reassessment cycle or as an unusual condition occurring between July 1, 2020 and December 31, 2021 that would trigger revaluation for the 2021 and/or 2022 tax years.

¶38 The County also notes that its position regarding the January 1 assessment date and the phrase "intervening year" are both consistent with the Administrator's interpretation of these issues. For these reasons, the County

asserts that even if COVID-19 and public health orders at issue here qualified as unusual conditions—issues which it does not concede—neither would trigger a tax revaluation for 2020 because the alleged unusual conditions occurred after the January 1, 2020 statutory assessment date.

¶39 The district court agreed with the taxpayers' broader interpretation of the "unusual conditions" exception. We do not. We conclude that an unusual condition must have occurred *before* the second year in the reassessment cycle—here before January 1, 2020—to trigger a reassessment for the 2020 tax year. Put another way, an unusual condition that occurs in the middle of the second year of the two-year reassessment cycle does not require an assessor to conduct a mid-year tax revaluation. Rather, it is considered in the next year. In reaching this conclusion, we first explain that section 39-1-104(11)(b)(I) is ambiguous. Then we apply the canons of construction to derive the legislative intent of the statutory language regarding that provision. And finally, we consider and defer to the Administrator's interpretation of these provisions. *See Agilent Techs.*, ¶ 16, 441 P.3d at 1016–17.

1. The Plain Language of Section 39-1-104(11)(b)(I)

¶40 The question of when the "unusual conditions" exception can be triggered is one of statutory interpretation.

¶41 To resolve this question and decide whether the Assessor should have revalued the taxpayers' commercial properties mid-year in 2020—if COVID-19 and associated public health orders qualify as unusual conditions—we first look to the plain language of the statute. Specifically, we consider the parties' competing arguments regarding the import, if any, of the January 1 assessment deadline on the "unusual conditions" exception and their dispute concerning the phrases "intervening," "intervening year," and "years which intervene" and then address whether section 39-1-104(11)(b)(I) unambiguously states when an unusual condition must occur to trigger revaluation. We observe that it does not for two reasons.

¶42 First, the County is correct that section 39-1-105 identifies January 1 at noon as the annual assessment date for the entire real property tax scheme. This is significant because it suggests that the General Assembly intended to create a stable and predictable assessment date with very limited, explicit exceptions. However, the January 1 assessment date language that the County leans on does not appear in section 39-1-104(11)(b)(I). Because section 39-1-104(11)(b)(I) creates exceptions to the biennial reassessment scheme but is silent as to whether the January 1 deadline still applies, we conclude that it is ambiguous in this specific regard.

¶43 Second, the statute does not expressly define the terms "intervening," "intervening year," or "years which intervene." To further confuse matters, as the taxpayers observe, the "unusual conditions" provision states that section 39-1-104(10.2) is not intended to prevent assessors from accounting for conditions that occur during the "*years which intervene* between changes in the level of value." § 39-1-104(11)(b)(I) (emphasis added). But the subsection then goes on to instruct that "[i]f any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the *intervening year* so that the actual value of such property will be its correct level of value." *Id.* (emphasis added). Because the legislature never defines these terms and then refers to both intervening year, singular, and intervening years, plural, in describing the "unusual conditions" exception, the statutory language is reasonably open to multiple interpretations. *See CO_2 Comm.*, ¶ 22, 527 P.3d at 376.

¶44 Thus, because (1) the "unusual conditions" provision does not explicitly mention the annual January 1 assessment date, (2) title 39 does not specifically define intervening year or intervening years, and (3) the "unusual conditions" exception seems to contradict itself, we conclude that the exception's timing language is reasonably subject to multiple interpretations and that when viewed through this particular lens, this specific part of the statute is ambiguous. *See* § 39-1-104(11)(b)(I).

2. The January 1 Assessment Date Applies to Unusual Conditions

¶45 Having concluded that section 39-1-104(11)(b)(I) is ambiguous, we turn next to the canons of statutory construction to determine the General Assembly's intent.

¶46 We are obligated to respect the General Assembly's choice of language, so, "we do not add words to the statute or subtract words from it." *Oakwood Holdings, LLC v. Mortg. Invs. Enters.*, 2018 CO 12, ¶ 12, 410 P.3d 1249, 1252. As such, when the legislature expressly provides for statutory exceptions, we cannot read others into the statute. *See, e.g.*, *Karoly v. Indus. Comm'n of Colo.*, 176 P. 284, 286 (Colo. 1918); *Yen, LLC v. Jefferson Cnty. Bd. of Comm'rs*, 2021 COA 107, ¶ 13, 498 P.3d 1140, 1143; *see also Reale v. Bd. of Real Est. Appraisers*, 880 P.2d 1205, 1207 (Colo. 1994) (resolving the maxim "'expressio unius est exclusio alterius'—the expression of one thing is the exclusion of another" (quoting *Cornell v. McAllister*, 249 P. 959, 961 (Okla. 1926))).

¶47 Section 39-1-105 defines the assessment date under title 39:

> All taxable property, real and personal, within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date.

Cf. § 39-5-104.5, C.R.S. (2022) ("[P]ersonal property shall be valued as of the assessment date, and the tax shall apply for the full assessment year without regard to any destruction, conveyance, relocation or change in tax status occurring after the assessment date.").

¶48 We conclude that section 39-1-105 applies to the entire property tax system and that if the General Assembly intended to make an exception to the January 1 assessment date, it would have done so explicitly. The property tax scheme, for instance, explicitly allows for the revaluation of real property that is fully destroyed or demolished after the January 1 assessment date. *See* § 39-5-117, C.R.S. (2022). It also contains a provision that explicitly allows the assessment of newly constructed buildings in the middle of a tax year. § 39-5-132(2)(a)(I)(B), C.R.S. (2022); § 39-1-105. Mobile homes brought into Colorado after the assessment date are likewise explicitly subject to a notification and assessment process that allows mid-year assessments. *See* § 39-5-204, C.R.S. (2022).

¶49 Because Colorado's entire property tax scheme revolves around the January 1 assessment date and the legislature expressly carved out very limited statutory exceptions that are not tied to the assessment dates, it is apparent that when the legislature wanted to create such an exception, it knew how to do it. Moreover, if the legislature had intended to except unusual conditions in this manner, it would have expressly carved out that exception in section 39-1-104(11)(b)(I), as it crafted the explicit exceptions for real property that is fully demolished or destroyed, for newly constructed buildings, and for mobile homes that are new to the state, in each of those statutes. But it didn't. And "[a]n exception not made by the legislature is not to be read into the statute." *Yen*, ¶ 13,

498 P.3d at 1143 (quoting *Lang v. Colo. Mental Health Inst.*, 44 P.3d 262, 264 (Colo. App. 2001)).

¶50 Accordingly, we conclude that the General Assembly *did not* intend for section 39-1-104(11)(b)(I) to act as an exception to the January 1 assessment deadline.

3. Statutory Meaning of Intervening Year and Years Which Intervene

¶51 The General Assembly's use of the phrases "intervening year" and "years which intervene," though somewhat perplexing at first glance, supports this conclusion. As a matter of initial impression, we have not yet defined these terms. And as we noted above, the legislature's use of both singular *year* and plural *years* in section 39-1-104(11)(b)(I) seems contradictory on its face. To resolve this ambiguity, we begin by examining the legislative history, and, in that context, we then consider the goals of the statutory scheme as a whole.

¶52 In 1983, the General Assembly revised title 39. *See* Colo. Legis. Council, *Report to the Colorado General Assembly: Recommendations for 1988 Property Tax*, Rsch. Publ'n No. 317, at 5 (1987). The amendments increased the frequency of base year property tax assessments, changing the base year assessments from four-year

cycles to two-year cycles beginning in 1986.[7] *Id.* at 6 (explaining that the legislature initiated the base year method for valuing property in 1976). Because of the long interval between assessments up to that point in time and the resulting dearth of accurate valuation data, the amendment prescribed exceptions to the new two-year reassessment cycle to provide taxpayers with robust assessments. *Id.* These exceptions (1) extended the period for the reassessment cycle during the 1986 and 1987 base period and (2) allowed assessors to look back as far as 1973 to establish correct property valuations. *Id.*; *see* Ch. 429, sec. 1, § 39-1-104(11)(b)(I), 1983 Colo. Sess. Laws 1494, 1495; Hearing on H.B. 1004 before the H. Fin. Comm., 54th Gen. Assemb., 1st Reg. Sess. (Jan. 17, 1983) (statement of Rep. Schauer).

¶53 To further protect property taxpayers from incomplete or inaccurate historical data when there was an unusual condition, the legislature also amended section 39-1-104(11)(b)(I). 1983 Colo. Sess. Laws at 1495. The amendment provided as follows:[8]

> (b)(I) The provisions of subsections (9), (10), AND (10.1) of this section are not intended to prevent the assessor from taking into account, in determining actual value during the intervening years between base years, any unusual conditions in or related to any real property which

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[7] The current statutory definition for the base year assessment procedure has been in effect since 1991. *See* Colo. Legis. Council, *Report to the Colorado General Assembly*: *Recommendations for 1988 Property Tax,* Rsch. Publ'n No. 317, at 7 (1987).

[8] Capital letters signify new language added to the statute.

> would result in an increase or decrease in actual value. IF ANY REAL PROPERTY HAS NOT BEEN ASSESSED AT ITS CORRECT BASE YEAR LEVEL OF VALUE, THE ASSESSOR MAY REVALUE SUCH PROPERTY FOR AN INTERVENING YEAR SO THAT THE ACTUAL VALUE OF SUCH PROPERTY WILL BE ITS CORRECT BASE YEAR LEVEL OF VALUE; HOWEVER, THE ASSESSOR MAY NOT REVALUE SUCH PROPERTY ABOVE OR BELOW ITS CORRECT BASE YEAR LEVEL OF VALUE EXCEPT AS NECESSARY TO REFLECT THE INCREASE OR DECREASE IN ACTUAL VALUE ATTRIBUTABLE TO AN UNUSUAL CONDITION.

Id.

¶54 Thus, the General Assembly kept the existing statutory language that allowed assessors to look back at all the "intervening *years* between base years" (i.e., when reassessment cycles were four years) to correct erroneous valuations and ensure that valuations were accurate. *Id.* (emphasis added). But it added language in the subsequent sentence, specifying that the assessor could correct the actual value for an intervening *year* (i.e., in the new two-year reassessment cycles). *Id.* Understood through this lens, the use of the singular word "year" does not conflict with the use of the plural term "years." Rather, it clarified the legislature's intent that an assessor could not only look back to data in between assessments—when there could be multiple years between those assessments—to accurately discern property values but that the assessor could also revalue property for an intervening year to reflect its actual value. Hearing on H.B. 1004 before the H. Fin.

Comm., 54th Gen. Assemb., 1st Reg. Sess. (Jan. 17, 1983) (statement of Rep. Schauer).

¶55 With that legislative history in mind, we conclude that the references to intervening year and years which intervene in the "unusual conditions" statute, at first glance, seem internally inconsistent, but in fact, they are not. And we further conclude that the intervening year for the 2019-2020 biennial tax cycle is confined to the 366 days of the 2020 tax year that began on January 1, 2020, at noon.[9]

¶56 We reach this conclusion because we are required to construe statutes to avoid illogical results. *McCoy*, ¶ 38, 442 P.3d at 389. And here, absent an explicit statutory exception, the "intervening year" in section 39-1-104(11)(b)(I), necessarily refers to the singular year between reassessments. In other words, in our biennial tax scheme, the second year—which is always an even-numbered year—is the intervening year because it is the year which intervenes between changes in the level of value. *Cf.* § 2-4-107, C.R.S. (2022). Moreover, "[w]e must adopt a construction that avoids or resolves potential conflicts, giving effect to all legislative acts, if possible." *Mook v. Bd. of Cnty. Comm'rs,* 2020 CO 12, ¶ 24,

[9] The intervening year 2020 had 366 calendar days because it was a leap year. For the intervening years that are not leap years, we conclude that the intervening, even-numbered year is confined to the 365 days of the calendar year.

457 P.3d 568, 575 (alteration in original) (quoting *People v. Stellabotte*, 2018 CO 66, ¶ 32, 421 P.3d 174, 180).

¶57 And the taxpayers' expansive assertion that the intervening year spans two full calendar years conflicts with other statutory provisions where dates matter. *See supra* Part I; *see, e.g.*, § 39-5-121(1)(a)(I) (requiring the county tax assessors to mail the taxpayers land valuations by May 1 of each year). As we explained above, examples of unusual conditions include the remodeling of a structure, damage due to a fire or an explosion, and the installation of onsite improvements and additions. § 39-1-104(11)(b)(I). It would be impracticable for assessors to comply with statutory notice and other deadlines, for taxpayers to understand their tax obligations, and for taxing authorities to reliably budget and responsibly spend if assessors were compelled to constantly revalue properties and decrease or increase assessments in real time at any point during every two-year reassessment cycle. This would contravene the purpose of the statute, incapacitate the property tax system, and render the statute absurd.

4. Agency Interpretation of the Reassessment Requirements Under Section 39-1-104(11)(b)(I)

¶58 Next, we look to the Administrator's interpretation of the statute, which also supports our conclusion that the Generally Assembly *did not* intend for

section 39-1-104(11)(b)(I) to act as an exception to the January 1 assessment date.[10] *See Huddleston v. Grand Cnty. Bd. of Equalization*, 913 P.2d 15, 18 (Colo. 1996) (discussing that the Administrator has constitutional and statutory authority to promulgate uniform policies and procedures for implementing Colorado's property tax scheme in all sixty-three counties). Although we are not bound by it, the Assessors' Reference Library ("ARL") informs our inquiry into the timing requirements in title 39. *Agilent Techs.*, ¶ 16, 441 P.3d at 1016–17; *see* Colo. Dep't of Loc. Affs., Assessors' Reference Library Manuals, https://cdola.colorado.gov/publications/assessors-reference-library-manuals [https://perma.cc/W8UF-PDGH].

a. January 1 Assessment Date

¶59 The ARL provides that January 1 is the annual assessment date for all real property in the county where it is located. 3 Colo. Div. of Prop. Tax'n & Dep't of Loc. Affs., *Assessors' Reference Library: Real Property Valuation Manual* ("3 ARL") 2.2 (Rev. Jan. 2023). The administrative manual instructs the real property assessor as to their statutory duties each month. *See* 2 Colo. Div. of Prop. Tax'n & Dep't of Loc. Affs., *Assessors' Reference Library: Administrative & Assessment Procedures Manual* ("2 ARL") 2.11–2.71 (Rev. Mar. 2023) (laying out the statutory date

[10] The Administrator submitted a brief supporting Larimer County.

assessment calendar). In January, assessors are required to "[i]dentify properties that . . . were subject to the unusual conditions provisions as defined in § 39-1-104(11)(b)(I), . . . in the *previous year*." 2 ARL 2.13 (emphasis added). That is, after the assessment date, assessors are required to look backward to the prior year to identify properties subject to the "unusual conditions" exception.

¶60 Here then, following the January 1, 2020 assessment date, assessors were required to identify properties that were subject to unusual conditions in the 2019 tax year. Thus, even if COVID-19 and the related public health orders were unusual conditions, they occurred well into the 2020 tax year, meaning they would be identified and accounted for in the next tax year, 2021. *See, e.g.*, 2 ARL 2.13.

b. Definition of Intervening Year

¶61 The ARL interprets the language of section 39-1-103(15) to prescribe that the intervening year is the even-numbered year between the reassessment years, although the ARL does not expressly define that phrase. *See, e.g.*, 2 ARL 2.4. Section 39-1-103(15) describes the two-year reassessment cycle during which assessors determine levels of value for properties for the first year of the cycle and, without reassessment, then applies that same level of value to the second year of the cycle. The ARL designates the first year in the tax cycle as the reappraisal year and the second year as the intervening year. *See, e.g.*, 2 ARL 9.5; 3 ARL 1.8. Using those definitions, the Administrator lays out detailed policies and procedures for

administering the property tax code. In fact, "intervening" appears in 2 ARL forty-three times and in 3 ARL forty-seven times. And when "intervening" appears, it serves as a modifier to define exactly when the assessor must perform (or not perform) a specified duty. *See, e.g.*, 2 ARL 9.5 (specifying an assessor's duty to notify taxpayers "[i]f the difference between the actual value of the land . . . in the reappraisal year and the actual value of the land . . . in the intervening year increases by more than 75%").

¶62 As pertinent here, the Administrator's definitions limiting the bounds of the intervening year to the calendar year between reassessments makes sense in the context of Colorado's property tax system. Again, we note that, as the taxpayers contend, if the "unusual conditions" exception spanned the entire two-year tax cycle, an assessor could not meet the numerous assessment and notification deadlines set forth in the property tax statute. *See, e.g.*, § 39-5-121; 2 ARL 2.61–2.71.

¶63 That is, if an unusual condition—like an addition or a remodel—could change the property tax assessment at any time, the exception would completely undermine the ability of taxpayers and taxing authorities alike to rely upon the two-year reassessment cycle. No taxpayer or taxing authority would ever know if or how the assessments would change throughout the year. A sudden decline in the housing or commercial real estate market, for example, could result in an unexpected loss of revenue to taxing authorities mid-year. Conversely, a sharp

gain in the housing or commercial real estate market could surprise property owners with a new, mid-year tax bill. And a volatile period in which certain businesses closed, then opened, then closed in response to rapidly changing public health orders, and which may or may not have decreased the value of the properties in which the businesses were located, would require near constant revaluation. In short, this interpretation would have untenable results and upset the tax cycle for every taxpayer and every taxing authority in the state.

¶64 We decline to adopt an interpretation of intervening year, beyond that contemplated by the statute and the ARL, that could overwhelm Colorado's entire property tax system.

¶65 For these reasons, we conclude that the Assessor is not compelled to revalue the taxpayers' commercial properties for 2020 because the purported unusual conditions occurred after the January 1 assessment date. We further conclude that the term intervening year as it is used in the context of section 39-1-104(11)(b)(I) is the even-numbered year between the reassessment years. Put another way, the intervening year is the second year of the two-year tax cycle. Accordingly, the district court erred in determining that the Assessor was required to revalue the taxpayers' properties during the 2020 intervening year. We emphasize that this does not mean that the impact, if any, of COVID-19 and the public health orders

that followed will not be considered; rather, any impact will be reflected in the regular January 1, 2021 and January 1, 2023 tax assessment processes.

D. Taxpayer Burden of Proof Under Section 39-1-104(11)(b)(I)

¶66 Our decision regarding the timing issue is ultimately dispositive because the COVID-19 and the public health orders that followed occurred after the January 1, 2020 assessment date. Thus, the additional questions presented in this case regarding the burden of proof and whether COVID-19 and the public health orders that followed constitute unusual conditions are arguably moot.

¶67 While this court generally declines to rule on issues that appear resolved, we have also acknowledged that ostensibly moot issues remain viable under a few circumstances. *See Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm'n*, 620 P.2d 1051, 1054 (Colo. 1980). We may opine on issues that are no longer contested when they are "capable of repetition yet evading review," and also when "the matter involves a question of great public importance." *Humphrey v. Sw. Dev. Co.*, 734 P.2d 637, 639 (Colo. 1987) (first quoting *Goedecke v. State, Dep't of Insts.*, 603 P.2d 123, 124 n.5 (Colo. 1979); then quoting *Zoning Bd. of Adjustment v. DeVilbiss*, 729 P.2d 353, 356 n.4 (Colo. 1986)); *see also People v. Black*, 915 P.2d 1257, 1259 n.1 (Colo. 1996); *Colo. Off. of Consumer Counsel v. Mountain State Tel. & Tel. Co.*, 816 P.2d 278, 281 n.5 (Colo. 1991). Under these circumstances, we may choose to decide an issue "so as to establish a precedent for future action by trial courts." *Cloverleaf*

Kennel Club, 620 P.2d at 1054 (quoting *Rocky Mountain Ass'n of Credit Mgmt. v. Dist. Ct.*, 565 P.2d 1345, 1346 (Colo. 1977)). Because these remaining issues are capable of repetition yet evading judicial review, and because the question regarding the pandemic is a question of great public importance that could potentially impact Colorado's entire property tax system and thus every taxpayer and every taxpaying authority in the state, that is the choice that we make here.

¶68 Next, we turn to the burden of proof under section 39-1-104(11)(b)(I). Specifically, we address whether the Larimer County taxpayers are required to prove a diminution in their commercial property values for 2020 to compel the Assessor to revalue their properties pursuant to the "unusual conditions" statute. We conclude that they do not. We further hold that the taxpayers bear the burden to prove that (1) an usual condition existed, (2) their subject property was affected by that condition, and (3) the Assessor's valuation was erroneous when the taxpayers contested that value under sections 39-8-105 to -108, C.R.S. (2022).

1. Burden of Proof for Unusual Condition

¶69 Larimer County asserts that the taxpayers must prove a diminution in property value to trigger a revaluation due to an unusual condition. As with the timing issue above, our inquiry into whether taxpayers must prove their properties decreased in value to compel revaluation is one of statutory interpretation.

¶70 We must construe a statute in accordance with the legislative intent and goal of the statutory scheme as a whole. *See McCoy*, ¶ 37, 442 P.3d at 389.

¶71 Section 39-1-104(11)(b)(I) states that an unusual condition "in or related to any real property which *would* result in an increase or decrease in actual value" compels the assessor to revalue the property for the intervening year. (Emphasis added.) Larimer County contends that the word "would" means that a change in value "may or may not exist." Thus, only a change in value triggers a reassessment. In the alternative, the absence of a change in value would foreclose reassessment. And because, according to the County, reassessment is predicated on an alteration in property value, the burden falls on the taxpayer to prove that change in value. We are unconvinced.

¶72 First, as the district court determined, the statutory language explicitly describes the assessors' duties when an unusual condition arises. Specifically, section 39-1-104(11)(b)(I) instructs that "the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value" when the level of value is incorrect due to an enumerated unusual condition. Because the statutory language defining the assessors' duties is clear, "we effectuate its plain and ordinary meaning and look no further . . . [;] nothing more is required of the judicial inquiry." *Carrera v. People*, 2019 CO 83, ¶ 18, 449 P.3d 725, 729 (citation omitted).

¶73 Second, had the legislature intended that taxpayers demonstrate diminution of value due to an unusual condition to trigger revaluation, it would have expressly done so. And we cannot insert language where the legislature is silent to judicially enlarge taxpayers' duties where the legislature has omitted them. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004) (explaining that courts cannot broaden the meaning of a statute to include within its scope something that was omitted even if that omission was inadvertent). We decline to insert such language here.

¶74 Accordingly, we conclude the district court correctly determined that under section 39-1-104(11)(b)(I), each taxpayer need only demonstrate that an enumerated unusual condition exists to compel revaluation.

2. Subject Properties

¶75 We now address whether, when a taxpayer proves that an unusual condition exists, they must also prove that they are a property owner with a property affected by the unusual condition to trigger revaluation under section 39-1-104(11)(b)(I). We conclude that they must.

¶76 In its order granting summary judgment to the taxpayers, the district court held that because COVID-19 and the public health orders that followed were unusual conditions, "[w]hether or not each named plaintiff was a property owner that had a property affected by the regulations [was] irrelevant." Without conceding that COVID-19 and the public health orders that followed qualified as

unusual conditions under the statute, Larimer County argues that the district court's order runs afoul of basic principles of standing. We agree and conclude that taxpayers must own the subject property to have standing to assert the legal claim.

¶77 Whether an individual taxpayer's property value was affected by an unusual condition raises the issue of standing. "Standing is a threshold issue that must be satisfied in order for a court to decide a case on the merits." *Reeves-Toney v. Sch. Dist. No. 1*, 2019 CO 40, ¶ 21, 442 P.3d 81, 85. We review issues of legal standing de novo. *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 7, 338 P.3d 1002, 1006.

¶78 In *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977), we established a two-part test for standing under Colorado law: (1) a plaintiff must show injury in fact, and (2) that injury must be to a protected legal interest. Colorado courts generally allow broad taxpayer standing. *Reeves-Toney*, ¶ 23, 442 P.3d at 86. But in *Hickenlooper*, we clarified that the injury-in-fact prong defines conceptual limits such that a taxpayer "must demonstrate a clear nexus between [their] status as a taxpayer and the challenged government action." *Hickenlooper*, ¶ 12, 338 P.3d at 1008.

¶79 We have held that taxpayers are sufficiently injured for standing purposes when the "alleged unlawful government action concern[s] the alleged

misappropriation or misuse of taxpayer money" because the injury in fact is an economic one. *Reeves-Toney*, ¶ 24, 442 P.3d at 86. Conversely, we have declined to establish a clear nexus between the taxpayer and a purported governmental violation—and thus injury in fact—when there is no clear fiscal relationship between the two. *Id.* at ¶¶ 25–26, 28, 442 P.3d at 86–87. To be sure, tangible economic injury is foundational to taxpayer injury in fact. And absent that, taxpayer litigants do not have standing, thus foreclosing their right to raise a legal claim. *See CO_2 Comm.*, ¶ 19, 527 P.3d at 375.

¶80 Applying these principles here, the taxpayers must not merely prove that COVID-19 and the public health orders that followed in Larimer County satisfied the statutory requirements of an unusual condition under section 39-1-104(11)(b)(I). To have standing, they must also prove that such an unusual condition caused injury in fact to each of them. To do that, each individual taxpayer must establish a "clear nexus" between their economic injury and the unusual condition. This requires that the unusual condition impact each taxpayer's property, not merely, as the district court found, that the alleged unusual condition existed in the county. This is because for an alteration in property value to affect an individual taxpayer, that taxpayer must, in fact, own the property subject to the tax. *See Reeves-Toney*, ¶ 30, 442 P.3d at 88 ("Taxpayer

standing does not flow from every allegedly unlawful government action that has a cost.").

¶81 If, for example, taxpayer "T" does not own Blackacre, whether Blackacre has changed in value due to an unusual condition in the county cannot possibly cause injury in fact to T because they have no cognizable economic interest in Blackacre. Similarly, if T owns Whiteacre, and there is an unusual condition in the county that does *not* affect Whiteacre, then T cannot be injured in fact because they have no cognizable economic interest in county property valuations outside of Whiteacre. As such, for a taxpayer in this case to have standing, they must own and pay taxes in Larimer County on a property that was subject to the unusual condition. Merely paying taxes on a property in Larimer County is insufficient to satisfy the injury-in-fact requirement for standing.[11] Accordingly, for a taxpayer to have standing, if an unusual condition exists, it must impact the taxpayer's subject property.

¶82 Second, standing aside, we decline to recognize a generic right to revaluation under section 39-1-104(11)(b)(I) because it would be inconsistent with

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[11] Because the taxpayers who do not own real property in Larimer County do not satisfy the injury-in-fact requirement and thus do not have standing, we need not reach the legally-protected interest prong of the standing analysis.

the General Assembly's intent. Section 39-1-104(11)(a)(II) specifies that the purpose of the statute is "to achieve valuations for assessment which represent the current value of such property to the extent which is equitably and practically possible; and to minimize the costs associated with achieving such current valuations for assessment." Surely, compelling the Assessor to unnecessarily revalue properties that are not impacted by the alleged unusual condition is impractical and costly.

¶83 For the forgoing reasons, we reverse the district court order and conclude that each taxpayer must demonstrate that their subject property was impacted by an unusual condition to compel revaluation under section 39-1-104(11)(b)(I).

3. Burden of Proof for Assessment Valuation Objections

¶84 Next, we direct our inquiry to the intersection of title 39's administrative and judicial remedies.

¶85 Larimer County asserts that our standard of review for adjudicating property valuation objections is well established and that the district court misapplied that precedent. We agree with the County.

¶86 "An assessor's valuation of property for taxation is presumed to be correct." *Cantina Grill, JV v. City & Cnty. of Denver Cnty. Bd. of Equalization*, 2015 CO 15, ¶ 15, 344 P.3d 870, 876. Taxpayers challenging that assessment "bear[] the burden to prove, by a preponderance of the evidence, that the assessor's valuation is

incorrect." *Hinsdale Cnty. Bd. of Equalization v. HDH P'ship*, 2019 CO 22, ¶ 19, 438 P.3d 742, 747.

¶87 The district court concluded, however, that the *Hinsdale* evidentiary standard does not apply here because the taxpayers were not challenging their 2020 valuation; rather, they were seeking reassessment. And therefore, the district court held that the taxpayers must only prove that there was an enumerated unusual condition under the statute. § 39-1-104(11)(b)(I). In holding otherwise, the district court appears to have conflated the issues. It erroneously applied the preponderance of the evidence standard to the statutory interpretation issue we resolved above—the taxpayers' burden to prove an unusual condition necessary to trigger section 39-1-104(11)(b)(I). In doing so, the district court erroneously determined that the taxpayers were not burdened with proving that the Assessor's valuations for the subject properties were incorrect when, in fact, that is exactly the issue the taxpayers appealed to the district court.

¶88 The taxpayers are required to prove by a preponderance of the evidence that the Assessor incorrectly valued their properties in 2020. *Hinsdale*, ¶ 19, 438 P.3d at 747. Accordingly, we reverse the district court's ruling to the contrary.

E. COVID-19 and the Public Health Orders Were Not Unusual Conditions Under Section 39-1-104(11)(b)(I)

¶89 Finally, the taxpayers argue that COVID-19 and the public health orders passed in response to the pandemic fell within the "unusual conditions"

exception. For the reasons set forth in our opinions announced today in *MJB Motels,* ¶ 2, and *Hunter Douglas*, ¶ 3, we disagree. In short, COVID-19 was not a "detrimental[] act of nature" and the public health orders that followed were not "regulations restricting . . . the use of the land" and, as such, did not trigger commercial property revaluations in Larimer County in 2020.

IV. Conclusion

¶90 We conclude that article 1 of title 39 does not require an assessor to revalue real property when an unusual condition occurs—as here—in the middle of a tax year. Because the taxpayers sought revaluation in 2020 based on alleged unusual conditions that occurred after January 1, 2020, the district court erred in granting the taxpayers' motion for summary judgment.

¶91 We further hold that the taxpayers bear the burden of proving that an unusual condition existed before the pertinent January 1 assessment date, the unusual condition impacted their property, and the assessed value of their property was thus incorrect. We also conclude, consistent with our opinions announced today in *MJB Motels*, ¶ 3, and *Hunter Douglas*, ¶ 3, COVID-19 was not a "detrimental act[] of nature," and the orders issued in response to COVID-19 were not "regulations restricting . . . the use of the land" and, as such, did not trigger property revaluations in Larimer County in 2020.

¶92 For these reasons, we reverse the district court's grant of summary judgment in favor of the taxpayers and against the County and remand this matter to the district court for further proceedings consistent with this opinion.

JUSTICE BERKENKOTTER, joined by **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.