

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>JACK M. & KATHLEEN A. GUMPH,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	<p>▲</p>
<p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Jack M. & Kathleen A. Gumph Address: P.O. Box 4653 Breckenridge, Colorado 80424 Phone Number: (970) 453-7350 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 37226</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 9, 2001, Debra A. Baumbach, Janet W. Doll, and Karen E. Hart presiding. Petitioners appeared pro se. Respondent was represented by Frank Celico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOT 3 WOODS MANOR SUB
(Summit County Schedule No. 0500610)**

Petitioners are protesting the 2000 actual value of the subject property, a 10-room bed and breakfast known as “The Allaire Timbers Inn,” built in 1991 and consisting of 7,208 square feet. There is a self-contained apartment located in the basement of the property. The property is located at 9511 Highway 9, Breckenridge, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the subject property is a mixed-use property and the value is not in dispute. What is in dispute is the allocation made by the assessor for the lodging portion and residential portion of the property. The assessor has not followed the Division of Property Taxation (DPT) guidelines for the valuation of bed and breakfast facilities. The common areas are shared and should be classified as residential.

Respondent:

Respondent contends that there is no dispute that the subject property is a mixed-use, bed and breakfast property. The allocation is 20% residential, 80% commercial. The controverted areas, which include the great room, first floor kitchen, living room and dining room, the top floor room and loft, as well as hallways and stairways, are not predominantly used or designed for residential use. Any use of these areas by the owners is incidental.

FINDINGS OF FACT:

1. Petitioner, Mr. Jack Gumph, testified that the subject property was built in 1991 and was designed and built as a home and a bed and breakfast (B&B) facility. It consists of 2 stories, with 10 lodging bedrooms, each with individual bathrooms. There are also living room, sunroom, kitchen, dining room, and loft areas. There is an apartment located in the basement, which is occupied by Petitioners.

2. Mr. Gumph presented a video showing the various areas of the subject property, including the bed and breakfast bedrooms, the basement apartment, and the areas in dispute. There are full kitchens and living rooms located on both the first floor and in the basement apartment.

3. Mr. Gumph believes they are being taxed as a motel/hotel rather than a bed and breakfast.

4. Mr. Gumph testified that the disputed areas are available for use by both guests and the owners. He believes these shared areas should be classified as residential. The assessor only classified the basement area as residential. The assessor classified the property as 19% residential, 81% commercial. He believes the classification should be 64% residential, 36% commercial.

5. Under cross-examination, Mr. Gumph testified that the basement apartment is approximately 700 square feet in size, with the total basement square footage being 1,422. He believes that the entire basement area was allocated a residential use, which included the laundry room and office.

6. Upon questioning from the Board, Mr. Gumph clarified that the laundry room was used for both the owners and the B&B operation. There are two hot tubs at the property. The hot tub at the basement level is private, but is occasionally leased to the guests.

7. Petitioners' witness, Mr. Howard Lerner, President of the Bed and Breakfast Innkeepers of Colorado (BBIC), testified that the Allaire is a member in good standing with this organization. He testified that traditional B&B establishments are eligible for full membership; hotels/motels, etc., are not. He believes the Allaire is a typical B&B operation. He testified that the Division of Property Taxation's B&B policy states "Shared or common area is defined as rooms and/or floor areas that are available to both the paying guest and the owner or manager. These areas may include foyers, kitchens, dining rooms, entertainment rooms, hallways, and staircases." He believes that the Allaire common areas should be classified as residential.

8. Mr. Lerner testified that he is aware of a survey that revealed at least 20 B&B inns have kitchens in the owner's living quarters. However, he believes that at least 50% of B&Bs have kitchens in the owner's living quarters.

9. Petitioners' witness, Ms. Sallie Clark, founding and past President for the BBIC testified that she has been a B&B owner since 1986. She participated in establishing the DPT guidelines for B&B inns. She described a home-stay B&B operation and testified that the DPT guidelines were not written for home-stays. All B&Bs are unique. The guidelines were made for their industry. One of the interests they dealt with was common areas. It was agreed that these areas should be assessed as residential.

10. Ms. Clark testified that Exhibit 6 is an email from Jerry Wiemholt of the DPT that states only the lodging rooms and private baths would be assessed at the 29% rate. There was nothing to say that the guidelines would not apply to all B&B operations, not just home-stays. She also quoted a portion of Exhibit 19, which is a memo from the Property Tax Administrator (PTA) dated August 21, 1998 that states, "Shared or common area within the mixed-use improvement is classified as residential property and assessed using the residential assessment rate." She does not believe the Summit County Assessor is following the DPT guidelines regarding the subject property. She does not believe the unique character of the Allaire prohibits it from being taxed according to the DPT guidelines. She concurs with Petitioners' estimate of residential and commercial areas. She believes the DPT guidelines were established to have a consistent valuation for B&Bs throughout the state.

11. Under cross-examination, Ms. Clark testified that she believes the DPT is the expert in the appraisal of B&Bs, but the industry is the expert in the classification of B&Bs. All B&Bs are mixed-use properties. She calls the Allaire a B&B inn that could be classified as either a large or small operation. She testified that innkeepers spend most of their time with the guests in the common living room.

12. Petitioners' witness, Georgette Contos, past President of the Summit County and Breckenridge B&B Associations, testified that most B&Bs have common areas. She testified that Exhibit 9 is a breakdown of other Summit County B&Bs mixed-use allocations and pointed out that the Allaire commercial allocation is greater than the others. She does not consider the Allaire to have any unique characteristics when compared to the other inns. She is sure that all of the inns listed in the exhibit have separate living quarters, except maybe the Lark Mountain Inn.

13. Petitioner, Mr. Gumph offered additional testimony. He contends that the entire subject property is a home. They built the facility as a home with a B&B operation. Friends and relatives come to visit and they sleep in the B&B first floor bedrooms and use the common areas along with the guests. They park in the B&B parking lot and enter the basement apartment through the common living room.

14. Petitioners are requesting a 2000 value based on a 64% residential, 36% commercial mixed-use classification for the subject property.

15. Respondent's witness, Mr. Michael W. Peterson, a Licensed Appraiser with the Summit County Assessor's Office, testified that he is responsible for appraising special purpose properties in the county. He has conducted a physical inspection of the subject property.

16. Mr. Peterson testified that there are three types of B&Bs: 1) home-stay, being single family homes renting out 1 or 2 of their rooms; 2) properties that were originally single family homes, but later added rooms and common areas for the purpose of renting rooms; and 3) properties that were designed specifically as a B&B for short term lodging, with a secondary use as a residential home. He considers the subject property to be a type 3 B&B.

17. Mr. Peterson testified that he classified the subject property based on the actual square footage of each use. He feels that if the subject property were to sell, it would be primarily sold as commercial property. He made the same allocation calculation for all the B&Bs in the county. He proceeded to describe the various B&Bs in the county, including their allocation percentages and their original and current configurations.

18. Mr. Peterson testified that he did not feel the DPT guidelines adequately applied to the subject, but applied to B&Bs that were primarily used as a residence, but had lodging rooms for rent. He felt the subject was primarily commercial, with a secondary use as a residence. The subject property was designed primarily as a lodging facility, which was not addressed by the DPT guidelines. He feels the DPT guidelines are just that, guidelines. The industry has moved from a supplemental use to primary commercial use. The only definition of a lodging property is a hotel/motel and he feels that the subject is more than a home.

19. Mr. Peterson testified that the subject property has always been assessed as a mixed-use property. It is not being singled out from any other B&B. He identified the basement area as residential. The first and second floor areas are not an integral part of the residence, but are integral to the B&B operation.

20. Under cross-examination, Mr. Peterson reiterated that he allocated the mixed-use areas for B&Bs based on actual area of use. He is looking at the primary use of the property.

21. Upon questioning by the Board, Mr. Peterson testified that there are 16 B&Bs in Summit County. The largest in square footage and available rooms is the Little Mountain Lodge. There are two other B&Bs that have higher or equal commercial area allocations. The correct allocation for the subject property should be 80% commercial and 20% residential. The CBOE split was 81% commercial and 19% residential, but he later found an error in the calculation of the square footage of the subject property. He does not consider any of the common areas to be residential; he considers the basement area to be the only residential use. There is a separate access to the basement area from a deck. He believes that the use of the common areas are primarily business use, the residential use is secondary. He believes that the owner of a single family home does not have the option of using only parts of the home. The subject property does give that option.

22. In rebuttal, Mr. Gumph testified that the exterior entrance to the basement is not useable in the winter.

23. Respondent's witness, Mr. Alex Martinez, Manager of the Division of Property Taxation, Appraisal Standards section, testified that he made a field inspection of the subject property a year ago. He is familiar with the DPT procedures; they were written under his supervision. He is a licensed appraiser. He is often asked to interpret the policies in the manual.

24. Mr. Martinez explained the mixed-use classification and that there have historically always been mixed-use properties, which are valued based on allocated use.

25. Mr. Martinez testified that prior to the guidelines, different assessors were using different techniques for valuing B&Bs. The PTA directed him to develop procedures to classify, identify and value B&Bs. They knew there would be some properties that could be easily identified for allocation, but some types would be more difficult. The PTA decided that if areas were truly used and shared, they would be classified residential.

26. Mr. Martinez testified that one must look at the intent of the shared areas, not availability. Property should be classified according to its use. The actual use is what is important in the definition. The primary purpose should be used as a residence, being an integral part of a residence. The final determination can be placed with the assessor. If they feel it is indeed a part of the residence, it can be classified common area. Based on his tour and observation of the subject, the basement is a fully functional operating unit that the owners can occupy and enjoy.

27. Under cross-examination, Mr. Martinez testified that the issue of separate kitchen areas was not specifically discussed in the guidelines development. They deliberately left the final classification decision to the local assessor. The determination of actual use lies with the assessor's office to determine proper classification.

28. Upon questioning from the Board, Mr. Martinez testified that, historically, B&Bs have been converted single-family residences. Commingled areas used by both the owners and lodgers are gray areas. In this case, the property was not designed as a home. The issue is what makes an area a common area: is it integral or not? They let the assessor decide.

29. Respondent assigned an actual value to the subject property based on an allocation of 19% residential, 81% commercial area for tax year 2000, but presented a corrected allocation of 20% residential and 80% commercial.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2000, but also requested a correction in allocation between uses be made by the Board.

2. It is not in dispute that the subject property is a bed and breakfast inn and is a mixed-use property. What is in dispute is the allocation of the common living areas to commercial rather than residential uses.

3. The Board heard testimony and was presented evidence that the owners and the B&B guests share the common areas. The dispute was whether the sharing of these areas was integral to the residential portion of the property. We believe they are not. There was sufficient evidence and testimony presented to persuade the Board that the basement apartment was wholly self-contained, including separate kitchen and living room areas. Although Petitioner testified that they also use the disputed common areas and commingle with guests there, the Board finds Petitioners' use of these areas to be incidental and secondary, not primary use.

4. Petitioners plead that the DPT bed and breakfast valuation guidelines state that the disputed areas, when used by the owners as well as the guests, are to be called common areas and assessed residentially. Petitioners also believe that the Assessor is to follow the ARL policy. We were most persuaded by the testimony of Respondent's witness, Mr. Martinez. It was the responsibility of his DPT section to develop the guidelines, and his testimony was that the assessor has the discretion to determine whether the common areas are integral and primarily designed to the residential use of the property. Both of the Assessor's witnesses conducted physical inspections of the subject property and both determined that the subject areas in dispute were predominantly used and designed for commercial purposes and were not integral to the residential portion of the property.

5. C.R.S. 39-1-102 (14.3) states "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights which are an integral part of the residential use...."

6. The Assessor determined, and we agree, that the areas in dispute were not predominately used and designed as a residence, but are a part of the lodging operation. The basement apartment could function as a separate entity, without the use of any of the disputed areas. Therefore, we find the disputed common areas are not an integral part of the residential use and should be allocated solely to commercial use.

7. After careful review of all the evidence and testimony presented, we affirm Respondent's assigned actual value and grant Respondent's request to reallocate said value to 20% residential use and 80% commercial use.

ORDER:

Respondent is ordered to reallocate the residential portion of the subject property to reflect 20% of actual value, and to reallocate the commercial portion of the subject property to reflect 80% of actual value.

The Summit County Assessor is directed to change her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 6th day of September, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

SEP 06 2001

Janet W. Doll
Janet W. Doll

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

Karen E. Hart
Karen E. Hart

Diane Von Dollen
Diane Von Dollen

