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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROBERT L. AND VERA MARIE SHAY,</p> <p>v.</p> <p>Respondent:</p> <p>GRAND COUNTY BOARD OF EQUALIZATION.</p> | |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Lisa M. Knight Address: 12873 West 3rd Place Lakewood, Colorado 80228 Phone Number: (303) 987-1913</p> | <p>Docket Number: 40368</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on August 7, 2003, Karen E. Hart and Steffen A. Brown presiding. Petitioners were represented by their daughter, Lisa M. Knight. Respondent was represented by Anthony J. DiCola, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Grand County Schedule No. R02371

Petitioners are contesting the 2002 vacant land classification of Lots 4 and 5 (Grand County Schedule No. R02371) located within Block 7 of the Gore City Addition in Kremmling, Colorado. Petitioners contend that the storage shed located on the subject property is used in support of the home and garage located on Lots 10, 11 and 12 (Grand County Schedule No. R02372).

ISSUES:

Petitioners:

Petitioners contend that the subject property has been used for 50 years as a residential site and they want all of the lots to be classified as one residential parcel.

Respondent:

Respondent contends that the subject lots are across and down the alley from the residence and garage, and do not meet the statutory definition of residential land under C.R.S. 39-1-102.

FINDINGS OF FACT:

1. Ms. Lisa M. Knight appeared as a witness and presented the appeal on behalf of Petitioners.

2. Ms. Knight testified that there is no argument as to value, only to the vacant land classification of Lots 4 and 5 on which the supporting residential storage shed is located.

3. Ms. Knight testified that the property has been used by Petitioners for 50 years as their home and that the storage shed is used in support of the property and will be conveyed with the residence.

4. Ms. Knight referred to Petitioner's Exhibit A, Attachment 2, a page from the Assessors Reference Library (ARL) which defines "Residential Land" under C.R.S. 39-1-102 (14.4). This page also references suggested judgment criteria questions to be asked in making a determination. The questions are:

1. Is the parcel(s) considered to be and actually used as part of a common unit along with the residence?
2. Would the parcel(s) in question likely be conveyed with the residence as a unit?
3. Is the primary purpose of the parcel(s) and associated structures to be for the support, enjoyment, or other non-commercial activity of the occupant of the residence?

Ms. Knight testified that the answer to all three questions is yes.

5. Petitioner is requesting that Lots 4 and 5 be reclassified from vacant land to residential for tax year 2002, with the residential assessment rate applied.

6. Respondent's witness, Mr. Kelly Griesch, Certified Residential Appraiser with the Grand County Assessor's Office, presented an indicated value of \$35,200.00 for Schedule No. R023701 (Lots 4 and 5) and \$109,420.00 for Schedule No. R023702 (Lots 10, 11 and 12).

7. Mr. Griesch described the subject as a single family dwelling and detached garage (Schedule No. R023702) located at the corner of 11th Street and Park Avenue. The two vacant lots with the storage shed (Schedule No. R023701) are located mid-way on Central Avenue. The vacant lots are not contiguous to Lots 10, 11 and 12, are across a 15-foot alley, and are 35 feet away (east) from the improved parcel.

8. Mr. Griesch cited the Assessor's Reference Library (ARL), Volume 2, in Respondent's Exhibit 1, page 37, which defines residential land as a parcel or contiguous parcels of land. Mr. Griesch also referred to Respondent's Exhibit 1, page 38, concerning parcels of land with residential use, along with the same criteria for consideration that Petitioner's witness presented. Mr. Griesch testified that the answer to questions 1 and 3 were yes, but he thinks it is highly unlikely that the parcels in question would be conveyed with the residence as a unit (question 2).

9. Upon cross examination, Mr. Griesch testified that he did not believe the parcels in question would be sold as one, and that no transactions in Kremmling had been bought with two non-contiguous parcels on one deed.

10. In recross, Mr. Griesch testified that the Petitioners owned several lots in the area and have sold them off over the years.

11. Respondent's witness, Ms. Pam Godfrey, Manager of Administrative Resources for the Division of Property Taxation, discussed the meaning of "in close proximity to" and "contiguous" in Volumes 2 and 3 of the ARL. Ms. Godfrey testified that there was an error and that this language should have been removed, but the change has not been approved yet. However, parcels separated by an alley or a road would not be contiguous.

12. Respondent assigned a vacant land classification and the appropriate assessment rate to the subject property for tax year 2002, with an actual value of \$35,200.00.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified for tax year 2002.

2. The Board examined the definition of residential land contained in C.R.S. 39-1-102 which states: "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and which is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in

a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term does not include any portion of land that is used for any purpose which causes the land to be otherwise classified. The term also does not include land underlying a residential improvement located on agricultural land.

3. The subject property shares common ownership with the improved parcel, but is not contiguous. Petitioner's witness testified that the property has been used by Petitioner for 50 years, and that the storage shed located on Lots 4 and 5 is used in support of the residence and will be conveyed with the residence. The Board notes that the properties are not contiguous and are located across an alley and about 35 feet east of the residence and would not meet the definition of residential land in C.R.S. 39-1-102.

4. The Board is not convinced that the parcel in question would be conveyed with the residence since both are stand-alone parcels that may be sold separately, as Respondent testified that the Petitioners had done with other parcels they used to own.

5. The Board also examined the ARL criteria contained in Petitioners' and Respondent's Exhibits. The Petitioners' witness testified, and Respondent agreed, that the parcel containing the shed is used as a common unit with the residence. Regarding criteria #2, it is unknown if the subject properties would be sold as a unit with the residence since they could be sold separately. Regarding criteria #3, Petitioner and Respondent agree as to the shed's purpose in conjunction with the residence. The properties appear to fit criteria 1 and 3, but the Board agrees with Respondent that it may not fit criteria 2 since the parcels may be sold separately.

6. As to Petitioner's request that the two properties be considered as one parcel, the Board notes that the two properties are not contiguous, and thus, cannot be listed on a common parcel number as one property.

7. Additionally, the Board notes that although Petitioner identified both parcels as being a part of this appeal, the Board found no evidence that the improved parcel was ever appealed to the Grand County Board of Equalization and that no documentation was submitted to show that an appeal was filed but not acted upon by that Board. We recognize that both parcels must be addressed for the purpose of determining the classification of the vacant parcel; however, this Board lacks jurisdiction to consider value, classification, or parcel configuration regarding the improved property, Grand County Schedule No. R23702.

8. After careful consideration of all of the testimony and evidence presented, the Board concluded that the 2002 classification of the subject property should remain as vacant land. Petitioner had no argument with the value assigned to the subject property.

ORDER:

The petition is denied.

APPEAL:

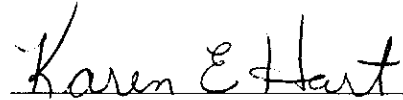
APPEAL:

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

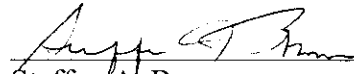
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 24th day of September, 2003.

BOARD OF ASSESSMENT APPEALS



Karen E. Hart

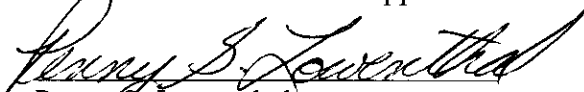


Steffen A. Brown

This decision was put on the record

SEP 23 2003

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



Penny S. Lowenthal

