

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioner:

ROGER BAUMAN,

v.

Respondent:

**CLEAR CREEK COUNTY BOARD OF
COMMISSIONERS.**

Attorney or Party Without Attorney for the Petitioner:

Name: Richard W. Toussaint, Esq.
Address: Toussaint, Nemer & Coaty, P.C.
3081 Bergen Peak Drive
Evergreen, Colorado 80439
Phone Number: (303) 674-0800
E-mail: rtoussaint@tnclaw.com
Attorney Reg. No.:

**Docket Numbers: 41013
and 41014**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2002, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by Richard W. Toussaint, Esq. Respondent was represented by Robert W. Loeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Sub: Bauman Division Tract 1 and Tract 2, respectively
(Clear Creek County Schedule No. R017076 and R017077)**

Petitioner is requesting an abatement/refund of taxes on the subject properties for tax years 2000 and 2001. The subject properties consist of two vacant land tracts known as Tract 1 (21.36 acres), and Tract 2 (10.69 acres). The subject tracts are adjacent to Petitioner's residential parcel.

ISSUES:

Petitioner:

Petitioner contends that the two subject lots should be classified as residential, as they are adjoined to Petitioner's residential property and used as a single property for residential purposes. There has been no change in the use of the properties since their purchase. The subject properties are incorrectly classified as vacant land and should be classified residential. The subject properties are being treated differently from the properties owned by three other property owners, solely due to their recent subdivision.

Respondent:

Respondent contends that the property has been classified as vacant land from the time the cabin was removed. The subject properties are two separate lots that were subdivided subsequent to purchase. Respondent believes the primary reason for the subdivision is to sell the two lots separately from the residence; they are not a necessary part of the adjacent residential parcel. Petitioner's only basis for residential classification is that the subject properties are commonly owned, contiguous parcels. The recreational activities are not in conjunction with the residential improvements; they also occur on land owned by other people and are therefore not necessary to the use of the residence.

FINDINGS OF FACT:

1. This is a consolidation of docket numbers 41013 and 41014.
2. The testimony and exhibits from docket numbers 40220 and 40221 are incorporated into this docket.
3. Petitioner is requesting a 2000 and 2001 classification change to residential with the residential assessment rate applied to the two vacant land parcels.
4. Respondent assigned a vacant land classification and assessment rate to the subject properties for tax years 2000 and 2001, with the following actual values:

<u>Docket #</u>	<u>Schedule #</u>	<u>2000 Actual Value</u>
41013	R017077	\$ 36,000.00
40221	R017076	\$ 72,100.00

<u>Docket #</u>	<u>Schedule #</u>	<u>2001 Actual Value</u>
41013	R017077	\$ 34,880.00
40221	R017076	\$ 87,160.00

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2000 and 2001.

2. The Board examined the definition of residential land, C.R.S. 39-1-102 (14.4), 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 the land which is used for any purpose which would cause the land to be otherwise classified. The term also does not include land underlying a residential improvement located on agricultural land.

3. The subject properties share common ownership and are contiguous to Petitioner's residential property. Petitioner's witness testified that the subject properties are used as a unit with the residential property for activities such as dog walking, picnicking, hiking, snowboarding, etc. The properties are not separately fenced and are divided into tracts that are not delineated by changes in surface use; the property lines are identifiable on paper. The subject properties appear to meet the definition of residential land in C.R.S. 39-1-102 (14.4).

4. The Board also examined the criteria list from the Division of Property Taxation, Assessor's Reference Library excerpt contained in Respondent's Exhibit 1, page 0053. Petitioner's witness has testified that the parcels are considered and actually used as a common unit with the residence, meeting criteria #1. Regarding criteria #2, it is unknown if the subject properties would be sold as a unit with the residence. The properties are legally separable and could be sold independently of the residence. As the properties are recently subdivided, it is unclear if they will be sold separately; such a disposition can only be speculated; Petitioner's written documentation states that the properties were divided for estate planning purposes. Regarding criteria #3, Petitioner's witness has testified as to the activities that traverse the residential property as well as the subject properties. The Board heard no testimony disputing that the properties were bisected with trails used for hiking, picnicking, dog walking, and other recreational uses. The properties appear to fit criteria #3 in that the primary purpose is for the support, enjoyment or other non-commercial activity of the occupant of the residence.

5. After careful consideration of all the testimony and evidence presented, the Board concluded that the 2000 and 2001 classification of the subject properties should be residential, with the residential assessment rate applied.

ORDER:

Respondent is ordered to reclassify the subject properties for year 2000 and 2001 to residential.

The Clear Creek County Assessor is directed to change her records accordingly.

APPEAL:

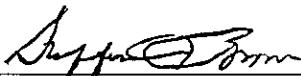
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 15th day of March, 2003.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

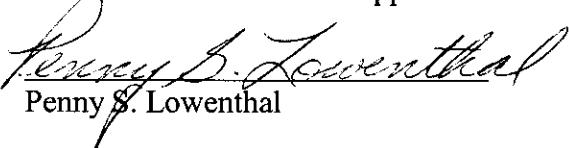


Karen E. Hart

This decision was put on the record

MAR 14 2003

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



Penny S. Lowenthal

