BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket Number: 41320
Petitioners: **PETER C. DROSTE AND BRUCE F. DROSTE,** v. Respondent: **PITKIN COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 21, 2005, Rebecca Hawkins and MaryKay Kelley presiding. Petitioner was represented by Wayne Schroeder, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioners are requesting a change of classification from vacant land to residential and a reduction in value for tax year 2003.

PROPERTY DESCRIPTION:

The subject property consists of nine separate parcels of vacant land located between Aspen and Snowmass, Colorado, further described as follows:

Lot	Pitkin County Schedule Number	Approximate Acreage	Owner of Record
1	R017398	35 acres	Peter C. Jr. and Elise Droste Trust, Peter C. Droste, Trustee
2	R017399	35 acres	Peter C. Droste
3	R017400	35 acres	Bruce F. Droste
4	R017401	35 acres	Peter C. Jr. and Elise Droste Trust Peter C. Droste, Trustee

5	R017402	35 acres	Edward and William Droste Trust Bruce F. Droste, Trustee
6	R017403	35 acres	Peter C. Droste
7	R017404	35 acres	Bruce F. Droste
8	R017405	35 acres	Edward and William Droste Trust Bruce F. Droste, Trustee
10	R017407	126 acres	Peter C. Droste

ISSUES:

Petitioners:

Petitioners contend that the subject property should be classified as residential because it meets the criteria for residential classification as set forth in C.R.S. §39-1-102(14.4) and the Assessor's Reference Library (ARL).

Respondent:

Respondent contends that the subject property should retain vacant land classification because it does not meet the criteria for residential classification.

FINDINGS OF FACT:

1. The subject property consists of eight parcels of approximately 35acres each and one 126.35-acre parcel, of which 99.033 acres and 3 acres are separate conservation easements. The property has mountainous terrain and panoramic views.

2. The subject property was part of a 935-acre parcel that had residential classification, as two houses and a barn were located on the property. In 1996, a 99.033-acre conservation easement was sold to Pitkin County for use as an elk migration corridor. (Reference Petitioner's Exhibit 4 – the western portion of the property identified with diagonal lines.) In 1999, a 503-acre conservation easement was sold to Pitkin County and Snowmass Village. (Reference Petitioner's Exhibit 4 – the central portion of the property identified with a herringbone pattern, as well as the 3-acre area labeled Gift Parcel.) In 2000, Petitioners subdivided a portion of the property into the nine parcels that are the subject of this appeal. (Reference the areas shown in blue on page 000028 of Respondent's Exhibit B/Lots 1 through 8, and the 126.35-acre parcel on the western portion of the property).

3. Pitkin County changed the classification of the subject property from residential to vacant land for the 2001 tax year. The 20-acre improved parcel shown at the top center of Petitioner's Exhibit 4 and page 000028 of Respondent's Exhibit B retained residential classification and is not part of this appeal.

4. Petitioners assert that the subject parcels should be classified as residential as they are contiguous with the 465.259-acre conservation easement and the improved 20-acre residential parcel; because the subject parcels are considered to be and are used as a common unit. The Board disagrees. None of the subject parcels are adjacent to or contiguous with the residential parcel, as the vacant parcels are physically separated from the residential parcel by the 465-acre conservation easement and none of the subject parcels are held in common ownership.

5. Petitioners further assert that the sale of the individual parcels is speculative and unlikely, as reasonable potential for residential development does not exist based on Pitkin County's repeated denials of applications for development. The Board notes that each of Petitioners' applications for development was different, and does not find the number of denials sufficient to prove that reasonable potential for development does not exist. Specifically, none of Petitioners' development applications addressed a stand-alone 35-acre parcel and Petitioners never addressed suggestions made by the County at the time the applications were denied. The Board finds that repeated applications for development and active marketing of the subject property during the base period established a reasonable expectation of development potential.

6. Petitioners are requesting that the actual value of the subject property be reduced as follows:

Pitkin County Schedule Number	**Proposed Actual Value**
R017398	$284,950.40
R017399	$285,121.37
R017400	$285,072.52
R017401	$285,186.50
R017402	$285,292.34
R017403	$285,447.03
R017404	$285,593.57
R017405	$285,976.22
R017407	$195,573.67

7. Mr. Larry Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, presented the following indicator of value:

Market: $1,035,000.00 per parcel

8. Mr. Fite presented six comparable sales of developed lots that include access and utilities. Respondent's sales are located in the upper end of the valley in the Snowmass/Aspen area and are similar to the subject lots in size, location, and view. The sales ranged in price from $1,300,000.00 to $4,875,000.00 and in size from 5.3 acres to 129.408 acres. After adjustments were made for size, location, views, and time, the comparables ranged from $2,000,000.00 to $2,900,000.00. Mr. Fite estimated the market value for each of the parcels as finished at $2,200,000.00.

9. Based on discussions with development experts, Mr. Fite estimated that the cost of development, including both direct and indirect costs, would range from 25% to 40%. Direct costs include roads, utilities, and landscaping. Indirect costs include financing expenses, taxes, and marketing fees. Only direct costs are allowable deductions for appraisal purposes and Mr. Fite estimated them at 33% or $726,000.00. The adjusted market value of the subject property was estimated at $1,474,000.00 per lot.

10. Mr. Fite estimated a three-year approval period and a two-year sellout period based on historical data regarding newer subdivisions in the area, and he concluded to a total absorption period of five years. Based on Division of Property Taxation guidelines, Mr. Fite applied a safe rate component of 4.86%; a management rate component of 2%; and a risk rate of 6.0%, because the subject property had no approvals in place. Mr. Fite's calculations resulted in an indicated value of $1,036,879.00 per parcel, rounded to $1,035,000.00 per parcel.

11. Respondent assigned an actual value of $1,100,000.00 per parcel.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject parcels are correctly classified as vacant land, but incorrectly valued at $1,100,000.00 per parcel.

2. The subject property does not qualify for residential classification pursuant to C.R.S. 39-1-102 (14.4), as the subject parcels are not "under common ownership upon which residential improvements are located and which is used as a unit in conjunction with the residential improvements located thereon."

3. The subject property does not qualify for residential classification pursuant to the Assessor's Reference Library. The subject parcels cannot be considered part of a common unit along with the residence as they are not under common ownership, the parcels in question are not likely to be conveyed with the residence as a unit, and the evidence and testimony does not substantiate that the primary purpose of the parcels is for the support, enjoyment or other noncommercial activity of the occupant of the residence.

4. In *Sullivan v. Board of Equalization,* 971 P.2d 675, the Colorado Court of Appeals held that the lack of common ownership between the vacant parcel and the adjacent improved parcel

was controlling as to the classification issue. The subject parcels are not adjacent to or contiguous with the improved parcel and lack common ownership.

5. Neither *Farney v. Dolores County Board of Equalization*, 985 P.2d 106 (Colo. App. 1999) nor *Gyurman v. Weld County Board of Equalization,* 851 P.2d 307-308 (Colo. App. 1993) substantiate residential classification for the subject property. *Farney* revolved around a residential improvement, and there are no residential improvements on any of the subject parcels. *Gyurman* was related to parcel size, which is not at issue in this appeal. In both cases, the property was under common ownership.

6. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988), the Colorado Supreme Court held that "...reasonable future use is relevant to a property's current market value for tax assessment purposes." The court explained that Colorado tax statute "does not preclude consideration of future uses." The court differentiated between "reasonable future uses" and "speculative future uses" that the court said could not be considered in determining market value for property tax purposes. The legal separation of the subject parcels, development applications, and continued marketing of the subject parcels suggests development is a "reasonable future use" rather than a "speculative future use."

7. The Board recalculated the value of the subject property based on estimated value of $2,200,000.00 per "finished" parcel, 40% for development costs, five-year absorption period and 13% risk rate to conclude to an actual value of $928,549.00 per parcel for tax year 2003.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $928,549.00 per parcel.

The Pitkin County Assessor is directed to change his/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 30th day of June 2005.

BOARD OF ASSESSMENT APPEALS

Rebecca A. Hawkins

MaryKay Kelley

This decision was put on the record

JUN 3 0 2005

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

Penny S. Lowenthal