

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>MARLIN (COLORADO) LTD.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>GARFIELD COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 45391</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 13, 2006, Debra A. Baumbach and Diane M. DeVries presiding. Petitioner was represented by Richard Y. Neiley, Jr., Esq. Respondent was represented by Don DeFord, Esq. Petitioner is protesting the 2005 classification of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

Lots 6 and 8, The Preserve at Prehm Ranch, Glenwood Springs, Colorado  
(Garfield County Schedule Nos. R008098 and R008100)

The subject property consists of two lots totaling 73.285 acres located in the Preserve at Prehm Ranch subdivision. An 800 square foot cabin is situated on Lot 6.

**ISSUES:**

**Petitioner:**

Petitioner contends that the subject property should retain the residential classification and assessment rate applied for tax years 2003 and 2004. The value of the subject property is not at issue.

**Respondent:**

Respondent contends that the subject property is properly classified as vacant land.

**FINDINGS OF FACT:**

1. The parties stipulated to the admittance of Petitioner's Exhibits 1-15 and Respondent's Exhibits A-H.

2. The Petitioner provided no witnesses or testimony.

3. Respondent presented an indicated value of \$744,280.00 for each lot after subdivision discounting was applied.

4. Respondent did not inspect the subject property in tax year 2003. The 2003 residential classification was based on its reported use as a temporary residence for the property manager.

5. After inspecting the subject property on August 30, 2004, the classification was changed to vacant land. The cabin does not have sleeping facilities and was not occupied as a residence.

6. The covenants for The Preserve at Prehm Ranch, recorded on September 25, 2001, indicate that the improvement located on Lot 6 is a non-residential river cabin that is a common amenity for use and enjoyment by Prehm Ranch Lot Owners, their families and guests. As such, the value of the cabin was distributed equally to each of the eight lots in the Preserve at Prehm Ranch for tax year 2005.

7. Respondent assigned a total actual value of \$1,488,560.00 to the subject property for tax year 2005.

**CONCLUSIONS OF LAW:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified for tax year 2005.

2. The subdivision was marketed as having common amenities including a non-residential river cabin, private ponds and exceptional fishing on one mile of private water. Five of the subdivision's eight lots have been sold.

3. Although Petitioner has not transferred title of the cabin to the owners association, the Master Declaration of Covenants, Conditions and Restrictions for the Preserve at Prehm Ranch recorded on September 25, 2001, clearly state that the river cabin is not for residential use.

4. Based on the evidence and testimony presented, the Board determined that the subject cabin was not used for residential purposes as of January 1, 2005 and that it could not be occupied as

4. Based on the evidence and testimony presented, the Board determined that the subject cabin was not used for residential purposes as of January 1, 2005 and that it could not be occupied as a residence without the addition of sleeping facilities. The primary factor to be considered in determining the property classification for property tax purposes is the actual use of the property on the relevant assessment date. *Farny v. Board of Equalization of Dolores County* 985 P.2d 106 (Colo.App. 1999).

**ORDER:**

The petition is denied.


**APPEAL:**

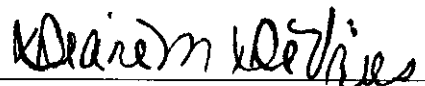
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 30<sup>th</sup> day of March 2006.

**BOARD OF ASSESSMENT APPEALS**

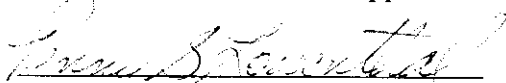
  
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Debra A. Baumbach

  
\_\_\_\_\_  
Diane M. DeVries

This decision was put on the record

**MAR 29 2006**

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

  
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Penny S. Lowenthal

