

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CORY AND LISA JACKSON,</p> <p>v.</p> <p>Respondent:</p> <p>GRAND COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 51720</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 25, 2010, James R. Meurer and Diane M. DeVries presiding. Lisa Jackson appeared pro se for Petitioners. Respondent was represented by Anthony J. DiCola, Esq. Petitioners are protesting the 2009 classification of the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

Grand County Schedule Nos. R160720 and R307084

The subject properties are a tract of land south of Lot 3 Warners First Subdivision located in Grand County (Schedule No. R160720) and the southern portion of Lot B Norman’s Minor Subdivision located in Town of Grand Lake and Grand County (Schedule No. R307084).

For tax year 2009, Respondent assigned vacant land classification and an actual value of \$82,400.00 to Schedule No. R160720, and vacant land classification and an actual value of \$79,500.00 to Schedule No. R307084. Petitioners are requesting reclassification to residential for tax year 2009.

The subject properties are located on Shadow Mountain Reservoir, Grand County, Colorado. Petitioners own Lot 3Warners First Subdivision, a tract of land south of Lot 3, and Lot B Norman’s Minor Subdivision. There is a 30-foot wide roadway that bisects the northern portion of Lot B from

the subject property Schedule No. R307084. This roadway is also located between Lot 3 and subject property Schedule No. R160720.

This 30-foot wide roadway is a gravel road and dead ends to the southeast within a few parcels of the subject properties. Respondent's Exhibit 4, Road Vacation Map, indicates County Road 693 dead ends and becomes Lake Kove Drive which is a private road.

Petitioners use Lot 3, the tract south of Lot 3, and both the northern and southern portions of Lot B as a total unit for the support and enjoyment of their residence. The residence is located on Lot 3. Lot 3 and the northern portion of Lot B are contiguous to each other and are classified as residential property. The tract of south of Lot 3 is also contiguous to the southern portion of Lot B.

Petitioners contend that they cannot convey title to the subject property Schedule No. R160720 separately from Lot 3 or convey title to the subject property Schedule No. R307084 separately from the northern portion of Lot B. The subject properties are unbuildable lots due to setback requirements from both Grand County and the Town of Grand Lake. There are no utilities to either of the subject properties. Schedule No. R307084 is landscaped and Schedule No. R160720 consists of a flagstone patio area, fire pit, and wharf for docking a boat. The subject properties are about 25 feet in depth.

Historically the subject properties have been classified as residential.

Respondent's witness, Ms. Katie Buss, provided an in depth history report of ownership of the subject properties in Respondent's Exhibit 1. Norman's Minor Subdivision Lot B was formally known as Warners First Subdivision Lot 2. Ms. Buss testified that the roadway, County Road 693/Marina Drive has been a legal right of way since first platted in 1923 and is not an easement. The conveyance of the subject properties has included the roadway exception in the legal descriptions of the recorded deeds and has described the lots to the north of the road as Parcel A and the lots to the south of the road as Parcel B.

Ms. Buss testified that the subject parcels "could" be conveyed separately; however, no documentation was provided to show that that conveyance has occurred within Grand County in a similar situation.

Residential land is defined as, “[A] parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon.” Section 39-1-102(14.4), C.R.S. The Colorado Court of Appeals has further clarified this definition:

[A] particular parcel of land may qualify for residential classification and assessment in one of two different ways: either by itself containing a residential dwelling unit that is used as such or, alternatively, by having residential improvement other than a dwelling unit and being used as a unit in conjunction with a residential dwelling unit located on a contiguous parcel that is under common ownership with the subject parcel.

Sullivan v. Board of Equalization, 971 P.2d 675, 676 (Colo. App. 1998).

The primary residential parcel must conform to the definition of residential real property as defined in Section 39-1-102(14.5), C.R.S. The Board finds that this requirement is met by the residence located on Lot 3 Warners First Subdivision.

According to the *Assessor’s Reference Library: Land Valuation Manual*, Volume 3, page 1.4, the following criteria should be considered when determining if parcels, which do not contain the residential dwelling unit, should be classified as residential property:

1. Are the parcels considered and actually used as 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 and associated structures to be for the support, enjoyment, or other noncommercial activity of the occupant of the residence?

If the answers to these criteria are yes, then it is likely that the parcel would fall under the residential classification.

The parties agree the answers to the above criteria are yes. However, Respondent believes that the subject properties are not contiguous to Lot 3 and the northern portion of Lot B due to County Road 693/Marina Drive. Petitioners believe that they own the property from the northern boundary of Lot 3 and Lot B to the shoreline of Shadow Mountain Reservoir with the exception for the roadway, County Road 693/Marina Drive, therefore the subject properties are contiguous and should be classified as residential.

After carefully reviewing the evidence and testimony presented by the parties the Board concludes that the subject properties should be classified as residential for tax year 2009.

Warners First Subdivision was first platted in 1923, prior to the creation of Shadow Mountain Reservoir. Lots 2 and 3 on the 1923 plat are what is now referred to as the northern portion of Norman's Minor Subdivision Lot B and Warners First Subdivision Lot 3, respectively.

It is unclear how and when title to the subject properties was conveyed to private ownership. However, in 1977 Lot 2 was conveyed together with what was known as Parcel B which included the land south of the lot to the reservoir "EXCEPT that portion thereof lying within the roadway shown on the plat of Warner's 1st. Subdivision." In 2006, Lot 3 was conveyed together with what was known as Parcel B which included the land south of the lot to the reservoir. The title insurance commitment issued near the time of this conveyance listed as an exception, "Easement, conditions, covenants, restrictions, reservations and notes on the plat of Warners First Subdivision recorded November 5, 1923 under Reception No. 28948."

The Board determines that it need not address the question of whether the subject properties are contiguous to Lots 3 and the northern portion of Lot B, because the Board finds that all of Lot B is one parcel. According to the *Assessor's Reference Library*, Volume 2, Administrative and Assessment Procedures, page 14.2, a parcel is "a defined area of real estate." Chapter 13, Land Identification and Real Property Description, of Volume 2 states, "In order to physically and legally establish this ownership, a need to describe the boundaries of the land was created. The resulting method of land description, called a **legal description**, identifies a parcel of real property in such terms that it cannot be confused with any other parcel."

In 2007, a plat for Norman's Minor Subdivision was recorded. The subdivision was "a redivision of Lots 1 and 2, Warners First Subdivision, according to the plat recorded November 5, 1923 under Reception No. 28948 AND Parcels B, C and D" The Dedication for Norman's Minor Subdivision states, "That Collie E. Norman and Vicki L. Norman, are the owners of that real property situated in the Town of Grand Lake, Colorado" which is described to include among other things all of Lot 2 in Warners First Subdivision and the land to the south of Lot 2 to Shadow Mountain Reservoir. The plat labels this entire parcel as "Lot B" and shows "Co. Rd. 693" running through the lot. The Dedication further states that the owners "do hereby dedicate and set apart all streets, alleys, and other public ways and places as shown on the accompanying plat to the use of the public forever"

The Board finds that at the time the plat was filed the entirety of Warners First Subdivision Lot 2 and the land south of the lot to the reservoir, including the subject property Schedule No. R307084, were privately owned. This entire area of real estate was labeled on the plat as "Lot B." Therefore, the Board concludes that this is one parcel. Although this parcel is split by County Road 693, the entire parcel should be assigned the same classification. The Grand County Assessor classified the northern portion of Lot B as residential since it is contiguous to and used in conjunction with the residential dwelling located on Warners First Subdivision Lot 3. Therefore, all of Lot B, including the subject property Schedule No. R307084 should be classified as residential.

Although it is unclear whether the roadway between Lot 3 and the tract of land south of Lot 3 is owned by the County, the Board need not address the issue of whether Lot 3 is contiguous to the track of land south of Lot 3 (subject property Schedule No. R160720), because the tract of land

south of Lot 3 is contiguous to Lot B (which is contiguous to Lot 3), and is used in conjunction with the dwelling unit located on Lot 3.

Therefore, the Board concludes that the subject properties should be classified as residential for tax year 2009.

ORDER:

Respondent is ordered to reclassify the subject properties to residential.

The Grand County Assessor is directed to change his records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

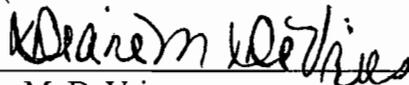
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

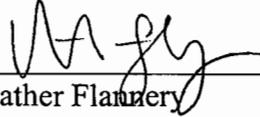
DATED and MAILED this 28th day of July 2010.

BOARD OF ASSESSMENT APPEALS


James Meurer


Diane M. DeVries

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


Heather Flannery

