BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **EILEEN AND LEE JOSSELYN,** v. Respondent: **PARK COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 52380**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 28, 2010, James R. Meurer and Lyle D. Hansen presiding. Petitioners were represented by Gregory Goodman, Esq. Respondent was represented by Marcus A. McAskin, Esq. Petitioners are protesting the tax year 2009 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

378 Aspen Way, Fairplay, Colorado
(Park County Schedule No. R0010500)

The subject consists of an approximately 600 square foot one-story frame cabin situated on a 1.74-acre lot. The building improvements include a kitchen, a bedroom and a bathroom. The kitchen has built-in cabinets and countertops, a kitchen sink, a built-in cook top and a wood-burning cook stove. The bathroom has fixtures that are not functional. The building has no electrical power from a power grid, no public water source, no public sewer hook-up and no septic system. Electricity is provided by an electrical generator. Domestic water is from a water tank. There is a pit toilet on site. The lot is located in the Sportsman's Valley subdivision, a gated community that has access from Park County Road 5. The subject has road access within the subdivision.

Petitioners presented no indicated value for the subject property.

Petitioners are protesting the reclassification of the subject from residential to vacant land. Petitioners are requesting the classification for the subject property be returned to residential.

In 2009 the Park County Assessor reclassified Petitioners' property from residential to vacant land. The Park County Board of Equalization upheld this action by the county assessor.

Petitioners argued that the subject is designed and used as a residence and that Park County has always classified the subject as residential. The issue is governed by state statute. Petitioners cited the definition of "Residential Improvements" in Section 39-1-102(14.3), C.R.S.: "A building, or that portion of a building, *designed for use* predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use."

Petitioners argued that the *Assessor's Reference Library* (ARL) issued by the Property Tax Administrator is not consistent with Colorado Revised Statutes definition of "Residential Improvements" and therefore cannot be relied on by the County. Petitioners argued that the ARL section relied on by Respondent is a guideline to be used and is not state statute. The statute only requires that a "Residential Improvement" be *designed for use* for predominately residential purposes.

Petitioner, Eileen Josselyn, testified that she and her husband have owned the property for approximately five years and that they purchased the subject to be used for weekend vacations. They occupy the property approximately three to five times in the summer and once in the winter each year. She testified that the building has a kitchen, bedroom and a bath. The building is approximately 600 square feet, it can accommodate up to eight individuals for sleeping, and the subject has access from County roads. They have made no improvements to the property. She testified that the bath plumbing fixtures were not functional and that a pit toilet was located on site.

Petitioners requested that the classification for the subject be returned to residential.

Respondent presented vacant land classification and an indicated value of $25,913.00 for the subject property based on the market approach.

Respondent presented no comparable sales and based the value indication at $13.00 per square foot for the improvement, the square foot value that the Park County Assessor has placed on sheds, and $19,204.00 for the land.

The Park County Assessor reclassified the subject from residential to vacant land and based this change upon the structures that are located on the property. Respondent argued that these structures are "Minor Structures" as opposed to "Residential Improvements." This reclassification is based upon the ARL and upon Park County's Individual Sewage Disposal System (ISDS) Regulations.

Respondent referenced ARL, Volume 2, Administrative and Assessment Procedures, Chapter 6.12, item 3, which states: "Does the improvement have a continuous supply of water, a working waste disposal system, electricity, and heating fuel?"

Respondent argued that since improvements do not include a working waste disposal system, the subject does meet this test of the ARL.

Respondent further argued that reclassification occurred since the subject does not meet Park County's requirement for an adequate sewage disposal system as required in the ISDS.

The Park County Environmental Health Department adopted the ISDS regulations on December 19, 1996. Section III, entitled "General Requirements and Prohibitions" Section 3.0, entitled "General Sanitation Requirements" states:

> A. The owner of any structure where people live, work or congregate, shall ensure that the structure contains adequate, convenient sanitary toilets and sewage disposal systems in working order.
>
> B. Under no conditions shall the discharge of sewage or effluent onto the ground or into waters of the State be permitted unless the sewage or effluent meets the minimum requirements of the Regulations or the water quality standards of the State of Colorado, Water Quality Control Commission, or the Park County 208 Plan, whichever is more strict.

Section 3.2, entitled "General Prohibitions" states, "G. No person shall construct or maintain any dwelling or other occupied structure which is not equipped with adequate facilities for the sanitary disposal of sewage as approved and permitted by this department."

Respondent argued that Petitioners have not applied for a sanitary sewer permit and that a sanitary sewer is required for a residence in Park County per the county's ISDS regulations. Respondent indicated that as of the assessment date of January 1, 2009, the subject did not have in place an ISDS permit for a sanitary disposal system and no sanitary disposal system existed on the subject site.

Ms. Josselyn testified that a sewage disposal system doesn't exist and that residents use a pit toilet for sewage disposal. Ms. Josselyn further testified that they purchased the subject in 2005 and did not check public records to determine if a certificate of occupancy or a sewage disposal permit had been issued.

Respondent assigned an actual value of $25,913.00 and vacant land classification to the subject property for tax year 2009.

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2009.

The Board relies upon the definition of "Residential Improvements" in Section 39-102(14.3), C.R.S.: "A building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use."

The Board concludes that the improvement on the subject property meets the definition of residential improvement, and therefore the subject property should be classified as residential for tax year 2009. The Board concludes the improvement on the subject property was both designed for residential use and is currently used for residential purposes.

Respondent cited to and included within their exhibit page 6.12 of the ARL, Volume 2, Administrative and Assessment Procedures. Respondent argued that since the improvement on the subject property does not meet one of the criteria listed, as it does not have a working waste disposal system, it should not be classified as residential. However, to rely only this page from the ARL is misleading. The criteria listed on this page are only part of Chapter 6, "Property Classification Guidelines and Assessment Percentages." More specifically the criteria fall under the section entitled "Camper Trailers, Multipurpose Trailers, and Trailer Coaches," a category the subject property does not fall under. Therefore, the Board gives these criteria little weight in determining that the subject property should be classified as residential.

The Board primarily looks to the use of the subject property as of the assessment date, January 1, 2009. *See Mission Viejo Co. v. Douglas County Bd. of Equalization*, 881 P.2d 462 (Colo. App. 1994) and *Farney v. Bd. of Equalization*, 985 P.2d 106 (Colo. App. 1999). The Board concludes that the use of the subject property as of the assessment date was for residential purposes. Whether or not the subject property is in compliance with local land use regulations is not relevant to the Board's determination.

Further, Section 39-1-103(14)(c)(II)(A) defines "Minor structures" as "improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose." The Board finds that the structure at issue in this matter does add value to the land and is used for residential purposes; therefore it does not meet the definition of a minor structure.

The Board notes that although the subject property may be undervalued when properly classified as residential and not as vacant land with a minor structure, by statute the Board is not permitted to adjust the value higher than assigned by Respondent. Therefore the Board affirms the assigned value of $25,913.00 and orders the property be classified as residential.

ORDER:

Respondent is ordered to classify the subject property as residential for tax year 2009.

The Park County Assessor is directed to change his/her 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 13th day of August 2010.

BOARD OF ASSESSMENT APPEALS

James R. Meurer

Lyle D. Hansen

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

Heather Flannery

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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