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| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>LOUIS A. AND MARY K. KOZIOL,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>TELLER COUNTY BOARD OF COMMISSIONERS.</b></p> | <p><b>Docket No.: 55589</b></p> |
| <p><b>ORDER</b></p>  |                                 |

**THIS MATTER** was heard by the Board of Assessment Appeals on September 22, 2010, Karen E. Hart and Debra A. Baumbach presiding. Ms. Mary Koziol appeared on behalf of Petitioners. Respondent was represented by Paul W. Hurcomb, Esq. Petitioners are requesting an abatement/refund for tax years 2007 and 2008, based on a residential classification of the subject property. The valuation is not in dispute.

Subject property is described as follows:

**Lot 55 Morning Sun No. 1, 285 Morning Star Court  
Woodland Park, Colorado  
Teller County Schedule No. R0023487**

The subject property is a vacant land parcel consisting of 0.99 acres. A fire destroyed the residence in April 2006. The subject is located within the Morning Sun subdivision in Woodland Park.

Petitioners contended the subject property has been illegally and erroneously classified as vacant land after a fire destroyed their residence in April 2006. Under Section 39-110-114, C.R.S., taxpayers may file a petition for refund or abatement of taxes if they believe that their property taxes have been levied erroneously or illegally.

Ms. Koziol argued the subject property has always been residential and debris from the fire was removed leaving the remaining concrete foundation and driveway. There is water service, a septic tank, a leach field, electrical service and a small outbuilding located on the property. The

outbuilding is used for storage. The burned house foundation has been cleaned up with approximately 80 to 85% of the foundation remaining usable area. Petitioners contend that under Section 39-10-102(14.3), C.R.S., the subject property's improvements meet the definition of "Residential improvements" and should be classified as residential.

Respondent's witness, Ms. Janet Brooks cited the following text from the ARL, Volume 2, Chapter 5:

Structures that were fully destroyed prior to January 1 of the current year are removed from the current assessment roll, and if no other structures exist on the parcel, the land is reclassified as vacant for the current assessment year. However, if construction of a new structure was started prior to January 1 of the current year, or if the old foundation was still in place on January 1 and the owner intends to construct a new improvement on the old foundation, the property is classified according to its intended use as of January 1.

Structures fully destroyed after January 1 are classified according to their use on January 1 of the current year, and the value is prorated according to Section 39-5-117, C.R.S.

Although the house foundation and driveway exist, Petitioners did not pull permits to indicate that they intended on rebuilding. Additionally, in a prior hearing, Petitioners argued the foundation was unusable. The only existing structure is a portable storage building, which is not located on a foundation and is considered personal property. Based on all information provided and under the ARL guidelines, the subject property was classified as vacant land.

Respondent assigned an actual value of \$50,000.00 for tax years 2007 and 2008

Because Petitioners previously filed a petition with the Board of Assessment Appeals for tax year 2007 and subsequently an order was issued, Petitioners are precluded from filing an abatement petition for the same year. Therefore, the Board lacks jurisdiction in the matter for tax year 2007.

In the matter of tax year 2008 the Board concludes Respondent correctly classified the subject property under statutory requirements as vacant land and not residential use under Section 39-1-103(c)(I), C.R.S. Although the foundation and driveway are in place, the Board could not conclude that Petitioners intended to rebuild after the fire. In fact, Ms. Koziol indicated she had no intentions of building on the subject site. The Board fully empathizes with Petitioners' loss and understands their frustration with the property tax process when there is a change in classification that results in a higher assessment rate and therefore higher property taxes as a vacant property than when the property was improved with a house. However, the Board must operate within the purview of Colorado statutory requirements.

The Board affirms Respondent's classification as vacant land.

**ORDER:**

The petition for tax year 2007 is dismissed due to lack of jurisdiction.

The petition for tax year 2008 is denied.

**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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 1<sup>st</sup> day of December 2010.

BOARD OF ASSESSMENT APPEALS

*Karen E Hart*

Karen E. Hart

*Debra A. Baumbach*

Debra A. Baumbach

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

*Amy Bruins*

Amy Bruins

