BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 57977
Petitioner: **ALICE L. BUTLER, TRUSTEE,** v. Respondent: **SAN MIGUEL COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 23, 2012, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner was represented by J. Richard Livingston, Esq. Respondent was represented by Rebekah S. King, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

Mountain Village, Telluride, Colorado

Lot 89-1B	**Schedule No. R1080089089**	**0.620 acre**
Lot 89-1D	**Schedule No. R1080089100**	**0.564 acre**
Lot 89-1C	**Schedule No. R1080089099**	**0.64 acre**
Lot 89-3B	**Schedule No. R1080090896**	**0.49 acre**
Lot 89-2A	**Schedule No. R1080090892**	**0.62 acre**

The subject property consists of five vacant sites: lots 89-1B, 89-1D and 89-1C are zoned for multi-family use; lots 89-3B and 89-2A are zoned for single family use. They are located in Mountain Village, which was incorporated in 1995 and is near Telluride's village core and the ski area gondola.

Petitioner is requesting residential classification. Respondent assigned vacant land classification with the following values: $1,045,000.00 for Lot 89-1B; $2,220,000.00 for Lot 89-1D

$1,850,000.00 for Lot 89-1C; $900,000.00 for Lot 89-3B; and $850,000.00 for Lot 89-2A. The parties have stipulated to these values if the determination for classification is vacant land.

Petitioner's witness, Mr. Roy B. Howell, Registered Appraiser, described the five subject lots as contiguous to Lot 89-3B, which has a residential improvement owned by Petitioner. Ms. Butler purchased 89-3B in 1991 and built the residence after purchasing the five vacant lots in 1997 and 1998. Mr. Howell testified that Ms. Butler purchased the vacant lots for privacy and as buffers from condominium buildings. Her intent was assemblage and integral use with the residential lot.

On May 1, 2011, Petitioner submitted an application to combine Lots 89-1D, 89-1C and 89-1B, vacate the condominium easement from Sunny Ridge Place, and vacate the interior lot lines and easements. The application is pending an outcome of an appeal by Crystal Condominium homeowners to use the road easement between Lots 89-1D and 89-1B for turnaround and parking.

Mr. Howell contended that the Assessor's Reference Library's definition of residential classification is met; the five vacant lots share common ownership with the improved parcel, they are used in common with and as an integral part of the residence, they would be conveyed with the residence as a unit, and their primary purpose is for the support and enjoyment of the residential homeowner.

Mr. Howell also argued that the subject lots conform to the statutory definition of "residential improvement". All five lots have dedicated sprinkler systems. Petitioner has installed trees, entry landscaping, berms, retaining walls and patios, stone paths and trails, lighted trees (with electrical service) for holiday ornamentation, and a stand-alone weather station.

Respondent assigned vacant land classification for the five subject lots. Respondent's witness, Guy T. Poulin, Certified General Appraiser, described Petitioner's improvements as located near the residential site's property lines, installed to enhance the view from the house and buffer condominium views. He considered them minor and failing to meet criteria for residential classification. Lot lines have not been vacated, and 15-person density rights, worth an estimated $10,000.00 per right, have not been sold.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified for tax year 2011.

The Board notes the statutory definition of "residential improvements" per Section 39-1-102(14.3), C.R.S. means " 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 notes the Assessor Reference Library criteria for Parcels of Land with Residential Use as parcels under common ownership that are contiguous to land used for a residence and used as an integral part of a residence (ARL Volume 2, page 6.10).

The Board is unable to define residential use by landscaping criteria alone; plantings, sprinkler system, and other miscellaneous improvements are located relatively near the house, do not exist throughout all five lots, are deemed minor, and do not meet the burden of proof in and of themselves. While criteria for residential improvements typically includes items such as structures and fences, none are appropriate for the five wooded lots, and the Board recognizes that Petitioner has no interest in changing the natural, scenic beauty of the surrounding terrain and that further improvements are unnecessary for use and enjoyment. Subjective in nature, the Board finds it difficult to qualify "residential use" requirements based on current improvements.

The Board is convinced that Petitioner's intent is integrated use and enjoyment with the residential lot. This is evidenced by the application for assemblage of Lots 89-1D, 89-1B and 89-1C, which includes vacating lot lines. However, as of the assessment date, application had not been made and lot lines had not been vacated. "Intent" is insufficient for residential classification.

ORDER:

The petition 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 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 4th day of April, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

MaryKay Kelley

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

Milla Crichton

STATE OF COLORADO SEAL BOARD OF ASSESSMENT

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