BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 59264
Petitioner: **WILLIAM H. HEDDEN, JR.** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 14, 2012, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by David Wunderlich, Esq. Petitioner is protesting the 2011 classification of the subject property. Valuation is not at issue.

Subject property is described as follows:

5260 Balsam Street (rear), Arvada, Colorado
Jefferson County Schedule No. 004305

The subject property is a 0.100 acre site with a 1,156 square foot garage. It is accessed by a private drive through 5260 Balsam Drive, which has a residential dwelling.

Respondent assigned vacant land classification and a value of $26,300 for the subject property. Petitioner is requesting residential classification.

"'Residential improvements' 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." Section 39-1-102(14.3), C.R.S.

"'Residential land' means 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.

Mr. Hedden described the residential parcel and the garage parcel (subject property) as family owned since the 1940's; the garage was built in 1958. Originally a single parcel, it was divided by Petitioner's parents when they divorced. Mr. Hedden and his sister own the residential parcel, which she occupies. He is the sole owner of the garage parcel; he and his sister both use it for storage. The driveway through the residential parcel is the only access to the rear parcel and garage.

Mr. Hedden argued that the subject parcel meets the statutory definitions of residential land and residential improvement: it is contiguous with and shares common ownership with the residential parcel; the detached garage is used in conjunction with the residential dwelling and the garage parcel is integral to residential use; there has been no change in use; and the two parcels would be conveyed as a single unit on sale.

At issue is the meaning of the phrase "common ownership". Mr. Hedden referenced *Bennett A. Auslaender and Karen S. Rosenberg v. Jefferson County Board of Commissioners*, a Board of Assessment Appeals case (Docket 57559) heard on October 11, 2011. The facts of this case were similar in that Mr. Auslaender and Ms. Rosenberg owned a residentially-improved parcel and Mr. Auslaender owned an adjoining unimproved parcel which provided access to the residence. The parcels were fenced as one unit, held a single well monitoring agreement, and would be conveyed as a single unit. The Board found that, because Mr. Auslaender's name appeared on both parcels as owner of record, the "common ownership" test of the statute had been met; "identical ownership" was not required.

The aforementioned decision cited two court cases involving the interpretation of "common ownership": *Walcker v. SN Commercial, LLC*, 2006 WL 3192503 (E.D. Wash. Nov.2, 2006); and *National Labor Relationships Board v. Carson Cable TV*, 795 F.2d 879, 882 (9th Cir. 1986). The Courts found that the definition of "common ownership" requires "a pattern" and a "common thread of ownership". "Complete identity" (identical ownership) is not required.

Respondent assigned vacant land classification to the garage parcel. Respondent's witness, David D. Niles, Certified General Appraiser, argued that "identical ownership" alone meets the statutory definition of "common ownership". Because this test was not met, residential classification is precluded.

Mr. Niles cited *Sullivan v. Board of Equalization of Denver County*, 971 P.2d 675 Colo. App. 1998). In this case, Mr. Sullivan's wife owned a residential improvement in which the two of them lived, and Mr. Sullivan owned the adjacent vacant parcel. The Colorado Court of Appeals determined that common ownership did not exist because the contiguous parcels were separately owned on the pertinent assessment date.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified.

The Board finds that identical ownership is not required to meet the statutory definition of "common ownership". Petitioner's co-ownership of the parcel containing residential dwelling as well as his ownership of the adjoining subject parcel is sufficient to establish "common ownership."

Further, the Board finds that the subject parcel is being used as a unit in conjunction with the residential dwelling unit located on the contiguous parcel. Accordingly, the Board concludes that the subject parcel qualifies for residential classification.

The Board finds that the *Sullivan* case, where ownership of the subject parcel was solely in taxpayer's name, while ownership of the adjacent parcel was solely in the name of taxpayer's wife, is factually dissimilar and therefore inapplicable to the subject appeal.

The Board concludes that the 2011 classification off the subject property should be residential.

ORDER:

Respondent is ordered to change the 2011 classification of the subject property to residential.

The Jefferson County Assessor is directed to change their 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 21st day of June, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

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

Milla Crichton

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