

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SIDNEY A. DINES,</p> <p>v.</p> <p>Respondent :</p> <p>ARAPAHOE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 65591</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 13, 2015, James A. Meurer and Debra A. Baumbach presiding. Petitioner was represented by Jeffrey Vail, Esq. Respondent was represented by Robert Hill, Esq. Petitioner is protesting the 2013 classification of the subject property.

Due to technical issues, the hearing before the Board was not recorded. The parties declined an opportunity to conduct a new hearing and instead agreed to stipulate to the facts presented at the hearing and to submit a written stipulation in writing. The parties' Post-Hearing Stipulated Statement of Facts was received by the Board on May 19, 2015.

The parties stipulated, among other things, that two of the three requirements for residential classification of the subject property pursuant to Section 39-1-102(14.4)(a), C.R.S., were met: that the property is contiguous to residential property owned by Mr. Danes at 5205 S. Steele Street; and that the subject is used as a unit in conjunction with the residential property. The parties disagree as to whether the subject property and the property on 5205 S. Steele Street are under "common ownership." The parties stipulated that there was no dispute as to valuation of the subject property, but that there was only a dispute as to its appropriate classification.

Respondent has requested the Board to declare statewide concern if the Board determines that common ownership can be determined based on a right of common control under Section 39-1-102 (14.4)(a), C.R.S.

Subject property is described as follows:

**3011 E Willamette Ln
Greenwood Village, Colorado 80121
Arapahoe County Parcel No: 2077-13-206-001**

The subject property consists of a 2.37-acre vacant lot parcel, Lot 1, Block 1, Dines Subdivision, Filing 1. The parties stipulated that as of January 1, 2013, the Arapahoe County public records showed that the subject was titled in the name of "CMD Trust u/a/d July 5, 1991." The site is situated adjacent to Petitioner's other property located at 5205 S. Steele Street, Greenwood Village, Colorado. As of January 1, 2013, the property on 5205 S. Steele Street was titled in the name of "Sidney A. Dines."

Petitioner is requesting residential classification and Respondent assigned vacant land classification to the subject parcel for the 2013 tax year.

Petitioner, Mr. Dines, testified that the subject property was purchased in 2005 and its ownership was immediately transferred to a Colorado Limited Liability Company known as Steele Street East, LLC, also formed in 2005. Mr. Dines stated the primary reason for transferring the subject property to the LLC was for liability protection in subdividing and constructing a speculation home on the eastern section of the site.

Mr. Dines contends he was the sole member and manager of Steele Street East, LLC from its inception in 2005 through September 15, 2011 when the company was dissolved. Based on a clerical error by his former attorney, an ownership document was signed and recorded with Arapahoe County where The CMD Trust, u/a/d July 5, 1991, was identified as the sole member of Steele Street East, LLC. Afterwards, Steele Street East, LLC conveyed the subject property to The CMD Trust, u/a/d July 5, 1991, via Bargain and Sale Deed (Correction Deed). As of January 1, 2013, the owner of record for the subject was The CMD Trust.

Mr. Dines testified that The CMD Trust was at no time a member or authorized representative of Steele Street East, LLC and therefore could not act on its behalf to convey the subject property. Mr. Dines contends that as of January 1, 2013, he had sole control to encumber, alienate, or transfer both the subject property and his adjacent property.

Mr. Dines claims that the subject property meets the three qualifications for residential classification based on Section 39-1-102(14.4)(a), C.R.S. and the criteria defined in the *Assessor's Reference Library* (ARL), Volume 2, Chapter 6, p. 6.10 and 6.11. Mr. Dines testified that (1) the property is contiguous to his adjoining property; and (2) the property is used in conjunction with the residence; and (3) the property is in common ownership with Plaintiff's adjacent residential parcel.

Respondent's witness, Ms. Karen Hart, Land Division Supervisor with Arapahoe County Assessor's Office, testified that she specialized in evaluating properties in determining their appropriate classification. Ms. Hart testified she reviewed the criteria outlined in the ARL, Volume 2, Chapter 6, pages 6.10 and 6.11 for residential classification. Ms. Hart agreed that the subject property was contiguous with Petitioner's adjoining residence and was used as a common unit with the residence. However, Ms. Hart disagreed that the property was in common ownership with the adjacent residential parcel as of January 1, 2013. Ms. Hart testified that

according to the Colorado Division of Property Taxation, the Assessors are required to review the name in which property is titled. Ms. Hart stated the subject property was titled in the name of The CMD Trust as of January 1, 2013 and Petitioner's adjacent residential property located at 5205 South Steele Street was titled in the name of Sidney A. Dines. Ms. Hart concluded the subject property was not considered in common ownership with the adjacent residential lot and therefore did not qualify for residential classification.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2013 classification of the subject was incorrect.

Based on the analysis of the testimony and evidence presented at the hearing, the Board concluded that the subject property does not meet the criteria for residential classification. Section 39-1-102(14.4)(a), C.R.S., defines "residential land" as follows:

"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. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term includes land upon which residential improvements were destroyed by natural cause after the date of the last assessment as established in section 39-1-104 (10.2). The term also includes two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5).

According to the *Assessor's Reference Library*: Volume 2, pages 6.10 and 6.11, the following criteria should be considered when determining whether parcels, which do not contain a residential dwelling unit, should be classified as residential property:

Parcels of land, under common ownership, that are contiguous and used as an integral part of a residence, are classified as residential property. The primary residential parcel must conform to the definition of residential real property as defined in § 39-1-102(14.5), C.R.S. *Sullivan v. Board of Equalization of Denver County*, 971 P.2d 675 (Colo. App. 1998), and *Fifield v. Pitkin County Board of Commissioners*, 292 p.3d 1207 (Colo. App. 2012).

The Board determined that the "common ownership" element for classifying the subject property as residential land is missing. Based on the information presented, the subject property and the adjacent lot were titled under different ownership as of January 1, 2013. While the subject was titled in the name of CMD, the adjoining property was titled in Petitioner's name. Petitioner did not present any authority to convince the Board that it is the ability to control the property, not the title ownership that underlines the statutory definition of "common ownership."

Moreover, pursuant to the testimony presented at the hearing, Petitioner specifically formed and conveyed the subject property to the Steele Street East, LLC for liability protection with the motivation of subdividing and building a speculation home in the future. While Petitioner was in full control of the LLC that owned the subject, the property was conveyed to the LLC for specific purpose of liability protection. A property owned by an LLC enjoys special protections which are not available to those properties owned by an individual. Therefore, the Board finds that an LLC ownership and an ownership by an individual are separate and distinct types of ownerships for purposes of the “common ownership” as stated in Section 39-1-102(14.4) (a), C.R.S.

In *Sullivan v. Board of Equalization*, 971 P.2d 676 (Colo. App. 1998), as of the applicable assessment date, the ownership of the vacant parcel was solely in taxpayer’s name, while the ownership of the adjacent residential parcel where the residence was located, was solely in the name of taxpayer’s wife. The court denied residential classification to the adjacent vacant parcel finding that the parcels were under separate ownership. In *Sullivan*, the court did not delve into the issues of control.

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-nine 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-nine 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.

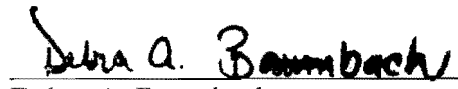
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 12th day of June, 2015.

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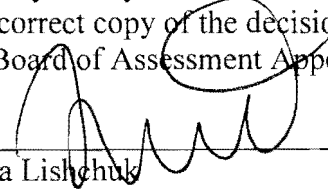


James Muerer



Debra A. Baumbach

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



Milla Lishchuk

