BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 68966
Petitioner: **JOE B. NEUHOFF FAMILY PARTNERSHIP, LTD,** v. Respondent: **EAGLE COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 14, 2017, Sondra Mercier and MaryKay Kelley presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Christina Hooper, Esq. Petitioner is protesting the classification of the subject property for tax year 2016.

To avoid duplicative testimony, the Board agreed to consolidate four dockets pertaining to two different properties for the hearing purposes only. The Board will decide each case solely on its own merits without regard to discussion pertaining to the second property, with separate decisions issued for each. The dockets addressed in the hearing include: Docket No. 68969, John A. and Barbara P. Mayer v. Eagle County Board of Equalization; Docket No. 68921, John A. and Barbara P. Mayer v. Eagle County Board of Commissioners; Docket No. 68966, Joe B. Neuhoff Family Partnership, Ltd. v. Eagle County Board of Equalization; and Docket No. 68920, Joe B. Neuhoff Family Partnership, Ltd. v. Eagle County Board of Commissioners.

Description of the Subject Property

400 Rolling Hills Drive, Edwards, Colorado
Schedule No. R041315

100 Rolling Hills Drive, Edwards, Colorado
Schedule No. R041312

This appeal involves the relationship between three legal and platted lots located in Creamery Ranch, a twenty-lot subdivision south of Edwards. Terrain is grassy, rolling meadowland. The subject lots are two of three contiguous lots owned by Petitioner and are described as follows:

260 Rolling Hills Drive (improved residential lot), 3.850 acres;

400 Rolling Hills Drive (vacant subject lot), 4.540 acres;
100 Rolling Hills Drive (vacant subject lot) 3.290 acres.

Respondent assigned *vacant land* classification for 400 and 100 Rolling Hills Drive, the two subject parcels. Petitioner is requesting residential classification. Valuation of the subject lots is not in dispute.

Applicable Law

Section 39-1-102(14.4), C.R.S. defines "residential land" as:

> "...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 ..." (Emphasis added).

The Property Tax Administrator (PTA) interprets Section 39-1-102(14.4), C.R.S. to mean that "[p]arcels of land, under common ownership, that are contiguous and used as an integral part of a residence, are classified as residential property." *See* Assessors Reference Library (the ARL), Volume 2, Section 6.10. Citing *Sullivan v. Denver County Board of Equalization*, 971 P.2d 675 (Colo.App.1998) and *Fifield v. Pitkin County Board of Commissioners*, 292 P.3d 1207 (Colo.App.2012) the PTA adds that the primary residential parcel must conform to the definition of residential real property as defined in Section 39-1-102(14.5), C.R.S.

Further, the Property Tax Administrator, *see* ARL, Vol. 2, Section 6.10-6.11 titled "Special Classification Topics; Contiguous Parcels of Land with Residential Use," emphasizes that the assessor's judgment is crucial in determining if contiguous parcels can be defined as residential property and that a physical inspection provides information critical to the determination whether a contiguous lot can be classified as residential. Moreover, the PTA suggests several judgment criteria to be considered when making such a determination:

- Are the contiguous parcels under common ownership?
- Are the parcels considered an integral part of the residence and actually used as a common unit with the residence?
- Would the parcel(s) in question likely be conveyed with the residence as a unit?
-Is the primary purpose of the parcel and associated structures to be for the support, enjoyment, or other non-commercial activity of the occupant of the residence?

The Property Tax Administrator's interpretation of statutes pertaining to property taxation is entitled to judicial deference as the issue comes within the administrative agency's expertise. *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 16-22 (Colo. 1996) ("Judicial deference is appropriate when the statute before the court is subject to different reasonable interpretations and the issue comes within the administrative agency's special expertise.")

The Colorado Court of Appeals has cited favorably the PTA's interpretation of the statutory definition of "residential land" per Section 39-1-102 (14.4), C.R.S. as well as the PTA's proposed

"judgment criteria" that assessors must consider when determining whether contiguous parcels are residential land. *Fifield*, 292 P.3d 1207.

Moreover, the procedures contained in the ARL promulgated by the Property Tax Administrator pursuant to Section 39-2-109(1)(e), C.R.S. are binding upon county assessors. *Huddleston*, 913 P.2d 15, 16-22.

Evidence Presented Before the Board

The parties have stipulated that the three lots described herein are commonly owned by the same party and are contiguous. The parties dispute whether the subject lots are used in conjunction with the residence at 260 Rolling Hills Drive, which is owned by Petitioner.

Petitioner's witness, Curtis Settle, Deputy Director, Division of Property Taxation for the State of Colorado, discussed both the statutory definition of residential real property and the ARL's interpretation of statute. He testified that the assessor's judgment is crucial in determining if parcels adjacent to a residential property can be classified as residential property. Suggested judgment criteria include, but are not limited to the four criteria outlined in the ARL. According to Mr. Settle, physical inspection and owner's perception are also important. There are numerous factors that the assessor may consider in determining appropriate classification for a property; one factor alone is not determinative.

Petitioner's witness, Travis Stuard, Property Tax Consultant, Duff & Phelps, testified that his company identified sixty taxpayers in Eagle County owning both a residentially-improved parcel with residential classification and a nearby vacant lot classified as vacant land. Letters were mailed to these taxpayers offering assistance in appealing the vacant land classification. Of those responding, approximately twelve appeals have been filed with the BAA following denial at the county level of appeal. Per the witness, Duff & Phelps is being retained on a contingency fee basis.

Petitioner's witness, Lawrence Neuhoff, testified that Neuhoff family bought the residential parcel in 1996 and the two subject parcels in 1997 in order to preserve the rural nature, for the views, and to prevent development. The decks and patios on the south side of the house look onto the subject parcels, the surrounding countryside, wildlife, and New York Mountain in the distance; open space is visible to the south. The family enjoys watching wildlife on the subject parcels. Occasionally, the family's grandchildren will sled on the subject parcels and might hit baseballs onto the subject parcels.

According to Mr. Neuhoff, the family's privacy and the rural setting would be impacted if houses were built on the subject lots, especially on Lot 2 (100 Rolling Hills Drive). Mr. Neuhoff acknowledged that the view of New York Mountain would still be there if houses were built on the subject lots. The family enjoys the three parcels equally and considers them to be a single unit. On cross-examination, Mr. Neuhoff admitted that a house on the west side of Lot 2 can be seen from the residence. In response to questions from the Board, Mr. Neuhoff stated that he thought the two subject lots could be sold pretty easily and to his knowledge there was no legal reason why the two subject lots could not be sold separately.

Mr. Neuhoff testified that the family has not legally consolidated the three parcels by vacating lot lines, nor have they considered a conservation easement. He argued, however, that they consider the three lots to be a single entity, and, should they sell the improved parcel, they would sell the vacant parcels along with it.

Petitioner's next witness, Travis Stuard of Duff and Phelps, testified about pictures he took of the residential parcel and the subject lots.

Respondent's witness, Kevin Cassidy, Certified Residential Appraiser for the Eagle County Assessor's office, testified that he saw no significant evidence that the subject lots were used in conjunction with the residence on the residential lot. He was not convinced that residential construction on the two vacant parcels would obstruct views of meadowland, wildlife, and distant mountain ranges.

The Board's Findings

The burden of proof in BAA proceedings is on the taxpayer to establish the basis for any reclassification claims concerning the subject property. *Home Depot USA, Inc. v. Pueblo Cty. Bd. of Comm'rs*, 50 P.3d 916, 920 (Colo. App. 2002). The Board finds that Petitioner failed to meet its burden of proving that the subject meets the definition of "residential land" which is defined in Section 39-1-102(14.4), C.R.S. as "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." (Emphasis added).

Use

The Board is not persuaded that Petitioner used the two subject parcels "as a unit in conjunction" with the residential improvements on the adjacent residential lot.

In making this finding, the Board is not convinced by Petitioner's claimed uses of the subject lots. Instead, the Board is persuaded by Respondent's witness, Kevin Cassidy, who, along with others from the assessor's office, visited the subject properties on multiple occasions and did not observe any evidence of use of the subject lots.

Mr. Cassidy's testimony concerning the views from the residence is also convincing. He testified that the view corridor from the residence is to the south (open space and high peaks). The Board believes that views from Petitioner's residence would not be negatively impacted in the event the subject parcels are developed. Other houses exist and are visible from the residence that do not impact the views. Given the location of the building envelopes for the subject parcels, the Board believes that the views of open space (Tract C) and the high peaks in the distance would remain even if houses were built on the subject parcels. Based on the evidence presented, the Board does not believe that the subject lots were used as a unit in conjunction with the residential improvements for the enjoyment or preservation of views.

The Board also believes Mr. Cassidy's testimony that the subject parcels would not likely be conveyed as a unit with the residential lot.

The Board is also persuaded by Mr. Cassidy's testimony that wildlife viewing from the residential lot would not be diminished should the subject parcels be developed. Mr. Neuhoff's very general testimony alleging past use of the subject lots for sledding, baseball and wildlife viewing is not compelling to the Board. Based on the evidence, the Board believes these uses of the subject lots are minimal at best, and the Board seriously questions whether these uses occurred on the subject lots at all as opposed to the residential lot or the open space (Tract C) Petitioners did not convince the Board which parts the subject lots, if any, were used for these purposes. The Board is not convinced that the subject lots are an integral part of the residence as a result of these alleged uses. The Board also does not believe that the primary purpose of the subject lots is for the enjoyment of the occupant of the residence for these alleged uses.

Finally, Petitioner did not convince the Board that the subject parcels were used to afford privacy to Petitioner's residence. The Board did not find Petitioner's privacy claim credible, given the existence and location of other houses in the area, the other buildable lot on Rolling Hills Drive, the size of the subject parcels, and the likely southern orientation of houses that would be built on the subject parcels to maximize views of the open space and high peaks.

After carefully weighing all of the evidence and considering the credibility of the witnesses, the Board is convinced that no portion of the subject lots was used by Petitioner as a unit in conjunction with the residential improvements located on the residential lot for tax year 2016. Accordingly, the Board does not believe that any portion of the subject lots is entitled to residential classification for tax year 2016. *See Farny v. Bd. of Equalization*, 985 P.2d 106, 110 (Colo. App. 1999) and *Fifield*, 292 P.3d at 1210 (determination of acreage entitled to residential classification is question of fact for BAA).

The Board finds that Petitioner failed to meet its burden of proof regarding reclassification of the subject parcels for tax year 2016.

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 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-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 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 20th day of April, 2017.

BOARD OF ASSESSMENT APPEALS

Sondra Mercier

MaryKay Kelley

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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