

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILLIAM J. SPICER, ET AL.,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 68967</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 15, 2017, Debra A. Baumbach and Louesa Maricle presiding. Petitioners were represented by F. Brittin Clayton III, Esq. Respondent was represented by Christina Hooper, Esq. Petitioners are protesting the 2016 classification of the subject property.

Petitioners' exhibits 1-7 and Respondent's Exhibits A-J were admitted into the evidence.

To avoid duplicative testimony, the Board agreed to consolidate four dockets pertaining to two different properties for purposes of the hearing 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. 68968 Kurtis & Natalie Rhoden v. Eagle County Board of Equalization; Docket No. 68922, Kurtis & Natalie D. Rhoden v. Eagle County Board of Commissioners; Docket No. 68967 William J. Spicer Et al. v. Eagle County Board of Equalization; and Docket No. 68923 William J. Spicer and Glen Lyon Development v. Eagle County Board of Commissioners.

Subject property is described as follows:

**1269 Westhaven Circle, Vail, CO
Eagle County Account No. R008219**

This appeal involves the relationship between two legal and platted residential lots located in the Glen Lyon Subdivision, in Eagle County, Colorado. The subject is a vacant buildable residential lot classified as vacant residential land by Eagle County, hereinafter identified as Subject Lot. This

lot contains 0.429 acre, has an irregular quadrilateral shape, sloping topography, natural grass ground cover and trees. Access to the parcel is via Westhaven Circle. There were no residential or recreational improvements on the lot as of the assessment date. The county assessor's records show the Subject Lot is owned by William J. Spicer and Glen Lyon Development, Inc. Mr. Spicer and Mr. Stephen W. Arent own Glen Lyon Development, Inc.

William J. Spicer and Stephen W. Arent, own a residence on a residential lot, which is not a subject of this appeal, located at 1259 Westhaven Circle #S, hereafter identified as the Residential Lot. The Residential Lot was part of a larger lot purchased in 1989 by Mr. Spicer and Mr. Arent, which was subdivided into two residential lots surrounded by a common ownership area, hereafter identified as the Common Area. The subdivided residential lots were improved with two single family attached residences. They and the Common Area are classified as *single family residential* by Eagle County. Mr. Spicer and Mr. Arent retained ownership of the south residence and sold the north residence to an unrelated party. The north residence has had three different owners since it was built. Ownership of the adjacent shared Common Area is allocated 50% to each of the residential units. As of the effective date of the assessment period, Mr. Spicer and Mr. Arent each owned 25% of the Common Area and the owner of the north unit owned 50%. The Common Area land around the residential units includes access drives to each residence and landscaping, and it shares a common border with the Subject Lot. The Subject Lot was purchased by the owners of the two attached residences in 1992 with the intent to preserve the southwest view from the residences.

Respondent placed vacant land classification on the Subject Lot for tax year 2016. Petitioners dispute the classification, arguing the Subject Lot should be re-classified as residential land for that tax year. Petitioners claim the Subject Lot is contiguous to the Common Area land next to the Residential Lot; Mr. Spicer and Mr. Arent own the Subject Lot, the Residential Lot, and a portion of the Common Area as individuals and/or through a company they own together; and the Subject Lot is used as a unit with the Residential Lot, serving to preserve the mountain views from the Residential Lot.

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]arcel(s) 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 agreed the appeal pertains only to land classification; the valuation of the subject property is not disputed. The parties dispute all three statutory tests for residential land classification: contiguity, common ownership, and use as a unit with an improved residential lot.

Petitioners’ first witness, Mr. Curt Settle, Deputy Director of the Colorado Division of Property Taxation, provided testimony regarding Assessor’s Reference Library (ARL) policies, practices, and procedures. He did not provide testimony specific to the subject property. Mr. Settle stated that Assessors must follow the ARL, but it is not law. He cited court rulings regarding the use of the ARL and that departures can be made from it if the ARL is contrary to law. Mr. Settle was asked to discuss the meaning of some specific language in the ARL and/or Colorado statute, including, but not limited to “purpose”, “integral”, “use”, “enjoyment” and “contiguity”. Mr. Settle stated the broad range of variables that apply when determining classification of contiguous parcels are factors to be considered, but do not on their own meet the overall test for qualification. For example, “enjoyment” of a property does not on its own meet the overall test for classification. The

witness also discussed the process and levels of review necessary to make changes to the ARL. In response to questions from the Board, Mr. Settle stated he is not aware of any active review of that portion of the ARL which addresses residential lot classification, as being inconsistent with the statute for the applicable tax year assessment period.

Petitioners' next witness, property owner Mr. William J. Spicer, testified the Subject Lot was purchased after construction of the attached residences was completed on the Residential Lot and the adjacent subdivided residential lot. Mr. Spicer, Mr. Arent, and the owner of the north residence at that time, agreed to buy the Subject Lot to preserve their mountain view, which they would lose if it were developed. Ownership of the Subject Lot was split 50/50 between the owners of the two residences. Petitioners purchased their 50% share in the name of Glen Lyon Development, Inc., a company wholly owned and managed by Mr. Spicer and Mr. Arent. Later, Mr. Spicer, as an individual, purchased the north residence owner's 50% interest in the Subject Lot. As of the 2016 assessment date, William J. Spicer owned a 50% interest in the Subject Lot and Glen Lyon Development, Inc. owned a 50% interest. Mr. Spicer testified the Subject Lot adds value to the Residential Lot. The witness stated he and Mr. Arent had not considered removing the lot line between the Subject Lot and the Common Area related to the Residential Lot after deciding it would impact future opportunities.

Mr. Spicer testified the Spicer and Arent families use the residence as a vacation home. The Subject Lot serves as a buffer from neighbors and noise, and provides an open view to the west toward Beaver Creek Valley. Mr. Spicer stated the Subject Lot is used for family activities, but has no dedicated use. The Subject Lot is used for only limited recreational activities such as an occasional "snipe hunt" game, the dogs are allowed to run on it, and there is some occasional sledding on the lot. The Subject Lot is not used for commercial purposes or agricultural purposes.

Under cross examination, Mr. Spicer was asked if he had expressed concern about the possibility of losing development opportunity for the Subject Lot when the tax agent approached him about the possibility of appealing the assessment. Mr. Spicer testified he did not believe so, but then agreed he had when presented with a copy of a letter dated December 28, 2015, he wrote to the tax agent, Duff & Phelps, expressing that concern.

Respondent presented the testimony of Kevin Cassidy, Certified Residential Appraiser with the Eagle County Assessor's Office. Mr. Cassidy testified to the contents of Respondent's Exhibits A-K, Rebuttal Exhibit I, and to Exhibit J. The witness stated he had inspected the Subject Lot and Residential Lot. The topography of the Subject Lot slopes downward to the northwest. The area is mostly developed, with few lots left. Views toward Vail Mountain are to the southeast and west. The witness testified that during his site inspection, he did not see any of the uses reported by Petitioners occurring on the Subject Lot or evidence of those uses. He observed no supporting, integral use of the Subject Lot to the Residential Lot. The witness observed pine trees blocking the view from the home on the Residential Lot across the Subject Lot.

The witness testified the Subject Lot is an independent development lot that is not contiguous to the Residential Lot. It is contiguous to the Common Area. The witness stated he did not consider the different percentage ownerships between the Subject Lot, the Common Area, and the Residential

Lot to be common ownership. Mr. Cassidy testified the owners of the Residential Lot cannot on their own convey or lease any part of the Common Area associated with the Residential Lot and the north adjacent residential lot. The owner of the north residence is also an owner of the Common Area. The Residential Lot is improved with one of two single family attached homes and he concluded it is not likely the Subject Lot and Residential Lot would be conveyed with the residence as a unit. The subject lot has valuable development rights as a separate lot. The witness concluded the primary purpose of the parcel is not for the support, enjoyment, or other non-commercial activity of the occupant of the residence.

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 Petitioners failed to meet their burden of proving the subject property 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).

Common ownership

Petitioners argue that the term "common ownership" as used in Section 39-1-102(14.4), C.R.S., is a flexible and functional term that encompasses overlapping ownership and substantial commonality of ownership. In support of this claim, Petitioners cite various sections of Colorado statutes that reference "common ownership" in the context of hotel and restaurant licensure, income and cigarette taxation and disabilities law. In addition, Petitioners cite statutory and case law from several other jurisdictions that interpret "common ownership" in a broad and functional manner.

Petitioners also argue that "common ownership" does not mean "identical ownership" and when the Colorado General Assembly means "identical ownership" it uses the term "identical ownership." According to Petitioners, because the General Assembly has used the different terms for "common ownership" and "identical ownership" in different settings, it must be presumed that the two terms have different meanings.

In sum, Petitioners contend that "common ownership" exists whenever there is a common thread of ownership or control between the two record owners. Petitioners claim that when legal title to the Subject Lot and the Residential Lot is vested in two individuals and in a company owned and controlled by those two individuals, there is a common thread of equitable title that exists and, therefore there is "common ownership" between the two parcels. That claim extends to the ownership of the Common Area and its relationship to the Residential Lot and the Subject Lot.

The Board did not find persuasive the legal authorities cited by Petitioners as none was on-point and many were outside this jurisdiction. The Board found the *Sullivan* case that dealt specifically with Section 39-1-102(14.4), C.R.S. is the most applicable and provides guidance for the Board's decision in denying Petitioner's appeal. In *Sullivan*, the Colorado Court of Appeals denied

residential classification based, in part, on a finding that “the ownership of [this] vacant parcel and the adjacent improved parcel was in different names on the [1996] assessment date.” Similar to the facts in *Sullivan*, the ownership of the Subject Lot vacant parcel and the improved Residential Lot on the assessment date was in different names. The Subject Lot was owned by William J. Spicer and Glen Lyon Development, Inc., and the Residential Lot was owned by William J. Spicer and Stephen W. Arent. Further, the Board finds the Subject Lot is not actually adjacent to the Residential Lot, rather it is contiguous to the Common Area, which is owned by William J. Spicer, Stephen W. Arent and BCKL, LLC, the owner of the north residence attached to the residence on the Residential Lot.

The Board is not persuaded by Petitioners’ argument that a common thread of ownership is sufficient to constitute common ownership. The evidence presented before the Board was undisputed that the ownerships of the Subject Lot, the Residential Lot, and the Common Area include a mix of individuals, a corporate entity, and a Limited Liability Company. Therefore, the Board is persuaded that although the ownership of the Subject Lot has some overlapping ownership with the Residential Lot (i.e. Mr. Spicer as an individual), it is separate and distinct from the ownership of the Residential Lot because it also involves a corporate owner. The Board finds the Common Area has some overlapping ownership with the Subject Lot and the Residential Lot. but also has a completely unrelated owner that has no ownership interest in the Subject Lot. Further, the Board finds that no two of the three properties have the same ownership. The individuals who have ownership interests, Glen Lyon Development, Inc., and BCKL, LLC are each a separate and distinct legal entity with different rights. The Board concludes that the Subject Lot and Residential Lot simply having some percentage of common ownership thread is not sufficient to qualify the Subject Lot for residential classification.

Contiguity

The contiguity of the Subject Lot and the Residential Lot is in dispute. Factually, the two lots are separated by the Common Area that supports the Residential Lot and the separately owned attached single family residence to the north. The Subject Lot and the Residential Lot do not touch at any point or along any boundary. Petitioners point to *Douglas Cty. Bd. Of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996) to support their assertion that the two parcels are “sufficiently contiguous” to constitute a single “functional parcel” for residential classification purposes. Petitioners claim that *Clarke* offers instruction to the Board, wherein natural geography, man-made boundaries such as fences, and the integrated or conflicting uses of the respective legal parcels be taken into consideration, not simply whether the parcels are “touching.” While the Board concurs that physical characteristics and integrated or conflicting uses may render two parcels which do not “touch” to be “sufficiently contiguous” to constitute a single parcel for residential classification purposes, that is not the case in the subject instance. The Board finds the two parcels are physically separated by a parcel that has different ownership and concludes the Subject Lot and the Residential Lot are not contiguous.

Use

The Board was persuaded that the Subject Lot was used as a unit in conjunction with the residential improvements located on the Residential Lot on the assessment date.

Although the Board was not convinced that Petitioners used the Subject Lot for the claimed physical activities on the assessment date, the Board was persuaded by Mr. Spicer's testimony that the Subject Lot was used as a unit in conjunction with the residence located on the Residential Lot to preserve and enjoy views from the residence. This finding is supported by Petitioners' long-term holding of the vacant Subject Lot and the fact that the residence is oriented to take advantage of the views across the Subject Lot. The Board was persuaded by Petitioners' claim there would be a significant loss of views if a residence were constructed on the Subject Lot.

Conclusion

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2016. Based on the lack of contiguity and common ownership, no portion of the Subject Lot is entitled to residential classification 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

Debra A. Baumbach

Debra A. Baumbach

Louesa Maricle

Louesa Maricle

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

Milla Lishchuk

Milla Lishchuk

