BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69910
Petitioner: **JOSEPH M. O'DEA AND CELESTE A. O'DEA,** v. Respondent: **GRAND COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 5, 2017, Diane M. DeVries and Sondra W. Mercier presiding. Petitioners were represented by Scott James, Esq. Respondent was represented by Alan N. Hassler, Esq. Petitioners are protesting the classification of the subject property for tax years 2014 and 2015.

Description of the Subject Property

Lot 21, Block 1 Lakeshore Addition to Shorewood
13428 US Hwy 34, Grand Lake, Colorado
Grand County Schedule No. 162400

This appeal involves the relationship between two legal and platted residential lots located on Shadow Mountain Lake. The subject is one of two contiguous lots owned by Petitioners in the Lakeshore Addition to Shorewood Subdivision. The lots are described as follows:

Lot 21, Block 1, Lakeshore Addition to Shorewood, subject, 0.33-acre of vacant land
Lot 20, Block 1, Lakeshore Addition to Shorewood, improved residential parcel

Respondent assigned *vacant land* classification for Lot 21, the subject parcel. Petitioners are requesting residential classification. The value of the subject lot 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 agreed that the two lots described herein are commonly owned and are contiguous. The parties dispute whether the subject lot is used in conjunction with the residence on the improved Lot 20, also owned by Petitioners.

Petitioner, Joseph O'Dea, testified that Petitioners purchased Lot 20 in 2003 and proceeded to renovate the 1950s residence. At the time of the purchase, a garage on the back of the residence ("lower garage") was accessible only from Lot 21 (subject). A steep hillside prevents direct access to the lower garage without traversing the subject lot. An access easement initially allowed Petitioners to store renovation construction materials and access the lower garage and residence from the subject lot; Petitioners subsequently purchased the subject in October of 2007.

Mr. O'Dea testified that the subject provides the only access to the lower garage, which is used primarily for storage of recreational equipment, including snowmobiles and bikes. The subject also provides beach access to the adjacent lake, has a firepit, and provides overflow parking for cars and recreational vehicles. Petitioners appealed the classification of the subject in 2016, and the property was reclassified to residential land for tax year 2017.

Tom Weydert, Grand County Assessor, confirmed that the subject had in fact been reclassified for tax year 2017 as residential land. Mr. Weydert also stated that to the best of his knowledge, there was no change in use of the subject between the tax years in question and tax year 2017. Mr. Weydert testified that denial of the 2014-2015 appeal was primarily due to the lack of notification by the owner of any classification issues prior to the 2016 appeal. He further indicated that he did not have evidence regarding past use, and that he does not believe that he can change classification retroactively as part of an abatement appeal. Mr. Weydert also questioned the need for the subject lot for access to the garage or lake, and reported that 2016 and 2017 photos of the subject indicated over-gown vegetation, weeds, and rocks preventing use.

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 met their 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 acknowledges the holding of the Colorado Court of Appeals in *Fifield v. Pitkin County Board of Commissioners*, 292 P.3d 1207 (Colo. App. 2012) that a parcel of land need not have any residential improvement upon it to be classified as residential. "[A] parcel contiguous to another commonly owned parcel with a residential dwelling unit need only be used as a unit in

conjunction with that residential dwelling unit (or associated residential improvement) to qualify as residential land." *Fifield*, 292 P.3d at 1209.

In *Fifield*, the Court specified that the "taxpayer's residential land consists of those portions of Lot One (Residential improved lot) and Lot Two (vacant lot) that were used as a unit in conjunction with the home on Lot One (assuming that there were no additional residential improvements on either lot)." Further, "the amount of land entitled to residential classification is determined solely by what portion of the lot is used as a unit in conjunction with a residential improvement." (*See Gyurman v. Weld Cnty, Bd. Of Equalization,* 851 P.2d 307, 309-10 (Colo. App. 1993).

Based on testimony and evidence presented at hearing, the Board is convinced that the subject lot provides the only usable access to the lower garage area, a condition that existed even prior to Petitioners' purchase of the subject lot requiring access easement. In addition, the Board found convincing Petitioner's testimony concerning the use of the subject parcel. The Board finds that Petitioners' uses of the subject lot constitute "use as a unit" in conjunction with the residence, requiring that the subject be classified as residential land.

Further, the Board was compelled by Respondent's testimony that there has been no known change in use between the relevant tax years and tax year 2017, yet the Assessor granted residential classification for the subject for 2017.

Respondent incorrectly denied the 2014-2015 appeal on the basis that Petitioners failed to timely bring the issue of classification to the attention of the Assessor. Respondent cited no relevant legal authorities in support of its position that property owners have "responsibility for proper notification" in cases involving owners seeking residential classification under the definition of residential land or that a failure to provide such "proper notification" to the Assessor results in a taxpayer's loss of appeal rights.

Moreover, the Board finds that the Grand County Assessor Office's policy to never grant abatements retroactively in cases where property owners seek residential classification pursuant to Section 39-1-102(14.4(a), C.R.S. is inconsistent with the Colorado abatement statutes. *See* Section 39-10-114, et seq., C.R.S.

ORDER:

Respondent is ordered to classify Lot 21 as residential land for tax years 2014 and 2015.

The decision of the Board is against Respondent. The Board recommends that its decision is a matter of statewide concern. *See* Section 39-8-108(2), C.R.S.

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 27th day of October, 2017.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Sondra W. Mercier

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

Milla Lishchuk

69910