BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69919
Petitioner: **ROXANA DALE KERNS REVOCABLE TRUST,** v. Respondent: **PARK COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 15, 2017, Sondra Mercier and MaryKay Kelley presiding. Petitioner was represented by Travis Stuard, Agent. Respondent was represented by Marcus McAskin, Esq. and Christiana McCormick, Esq. Petitioner is protesting the 2014 and 2015 classification of the subject property.

The Board consolidated Dockets 69919 and 69918 (Toni L. Robison Revocable Trust) for purposes of the hearing.

Description of the Subject Property

Lot 12A, Bailey Estates, Bailey, Colorado
Park County Schedule No. 17258

This appeal involves the relationship between two legal and platted residential lots. The subject, defined as Lot 12A, is a vacant, buildable 35.043-acre residential lot. It is classified as *vacant land* by Park County. The second parcel (not a subject of this appeal) consists of a 35.044-acre improved property, adjacent to the subject, defined as Lot 12, and classified as *residential.*

Lots 12 and 12A are irregularly shaped and contiguous. They are located in Bailey Estates, a residential subdivision near the town of Bailey with approximately 25 sites, each 35 acres, more or less. Terrain is gentle to moderately steep and forested.

Respondent assigned vacant land classification for the vacant subject site defined as Lot 12A. Petitioner is requesting residential classification.

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 to common ownership and the contiguous nature of the two parcels. The dispute is whether the subject lot is used in conjunction with the residential improvements on the adjoining residential parcel. Valuation is not disputed.

Eugene Kerns, husband of Petitioner's Trustee, Roxana Dale Kerns, detailed the chain of ownership for the two parcels. The two lots were purchased in 2004 by Roxana Dale Kerns and quit claimed to the Roxana Dale Kerns Revocable Trust in 2012.

Mr. Kerns testified that the two lots were purchased for the couple's future retirement and BLM land access. He and his wife have occupied the residence on Lot 12 since 2009. They consider the residential and vacant lots to be one unit. Mr. Kerns testified that his family enjoys riding ATVs, walking, hiking, and camping with their children and grandchildren on the subject lot. They also enjoy the wildlife and view of the Mosquito Range from their home's deck to the southeast. Mr. Kerns testified that the subject lot is an integral part of the residential lot, that the two are used as a common unit, and that they would likely be conveyed together.

Mr. Kerns testified that former owners owned short longhair cattle that were pastured on both parcels. External fencing surrounds the perimeter. Internal fencing crosses property lines. Mr. Kerns displayed photographs of trails running throughout the two parcels and crossing property lines. Formerly cattle trails, they are mowed and maintained for ATV use.

Mr. Kerns identified two wells, one on the subject lot and one on the residential lot. According to Mr. Kerns, both were originally used for the residence, fire protection, and livestock. The well on the residential lot now services the house, and the well on the subject lot is not currently being used.

Mr. Kerns identified two gates in the perimeter fencing on the subject lot. The gates access roads leading to BLM (Bureau of Land Management) land to the west of the subdivision. BLM land offers considerable acreage for outdoor activities. Mr. Kerns marked the approximate location of two campsites on the subject parcel. Both have fire rings. One has a Dutch-oven and another has a covered firewood storage.

Mr. Kerns acknowledged the possibility of selling the subject lot independent of the residential parcel but stated that the family's intent was use and enjoyment as a single unit and that there were no current plans to sell. He and his wife did not combine the two lots into a single lot at the time of transfer to her trust so as to maintain well rights on the vacant site. He stated that the reason for not vacating lot lines followed the same reasoning.

Respondent's witness, Gina Louise Ritter, Ad Valorem Appraiser for the Park County Assessor's Office, inspected both lots in September of 2017. She declined assignment of residential classification for the subject lot because she was not convinced that the vacant site was "used as a unit" with the residential parcel per Statute. Ms. Ritter noted Petitioner's decision not to vacate lot lines and not to combine the two parcels at time of quit claim.

Ms. Ritter did not consider fencing sufficient evidence to determine residential classification. She noted that it was erected by a prior owner; that it no longer serves a purpose; and that it neither supports nor provides enjoyment for the residential parcel. Ms. Ritter discussed Petitioner's testimony about the campsites, fire pits, and firewood storage on the vacant parcel. She did not consider them sufficient evidence for determination of residential classification.

Ms. Ritter confirmed existence of the ATV trails throughout both parcels. It is her opinion that the trails on the residential parcel are sufficient for ATV use. Ms. Ritter also confirmed the existence of gates on the vacant parcel providing access to BLM land. However, she considered that other access points to BLM land are likely and found the gates insufficient on their own for determination of residential classification. Defining "integral" as "necessary," Ms. Ritter did not consider Petitioner's testimony about the subject site's fencing, campsites and fire pits, trail system, or BLM-access gates meet the standard of "necessary" to the definition of use in conjunction with the residential parcel.

Respondent's witness, Abby Gail Carrington, Certified Residential Appraiser for the Park County Assessor's Office, inspected the two lots with Ms. Ritter. She addressed the topic of the well on the subject lot, citing the 35-acre minimum for a well on a building site. She noted that the two wells would be legally permitted should the lot lines between the subject and residential lot be vacated.

Curt Settle, Director, Division of Property Taxation, testified to several issues relevant to classification. First, an owner's intent to sell at a future date is irrelevant to classification; use beyond January 1 of the tax year in question cannot be considered; the intent to sell would need to be viewed in conjunction with use of the property on the assessment date. Second, per *Fifield*, residential classification does not require the existence of a structure. Third, an abatement petition for classification is a legitimate way to seek abatement of taxes.

Mr. Settle discussed the definition of "integral," suggesting uses such as wells, solar panels, and landscaping (for support of the residence). He also testified that "enjoyment" is one of the factors considered for determination of classification. Examples of "enjoyment" can be such as walking, buffering for peace and quiet, and cutting firewood for personal use. The more examples of passive use that are cited, the greater the likelihood of "use in conjunction" requirement is met. Mr. Settle, referencing the ARL, Vol. 2, Section 6.10-6, emphasized that the assessor's judgment is crucial in determining classification.

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 met this burden of proof and 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).

The Board is convinced that the primary purpose of the subject lot is use as a unit in conjunction with the residential improvements on the adjacent residential parcel. The fencing that surrounds the perimeter of both lots suggests that the two lots are used as a single unit. In addition, the family uses and maintains ATV trails and enjoys the fire pits on the subject parcel. Respondent's witness confirmed evidence of such use. Further, the subject parcel provides a convenient access from the residence to the BLM land.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2014 and 2015.

ORDER:

Respondent is ordered to re-classify the subject parcel as *residential* for tax years 2014 and 2015.

The Park County Assessor is directed to change his/her records accordingly.

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 19th day of December, 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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