| BOARD OF ASSESSMENT APPEALS,<br>STATE OF COLORADO<br>1313 Sherman Street, Room 315<br>Denver, Colorado 80203 | Docket Nos.: 70194 |
|---|---|
| Petitioner:<br><br>**KATHLEEN & RICHARD KROHN,**<br><br>v.<br><br>Respondent:<br><br>**GUNNISON COUNTY BOARD OF COMMISSIONERS.** | |

# ORDER

**THIS MATTER** was heard by the Board of Assessment Appeals on January 11, 2018, Debra A. Baumbach and James R. Meurer presiding. Petitioners were represented by Barbara Butler, Esq. Respondent was represented by Matthew Hoyt, Esq. Petitioners are protesting the 2014 and 2015 classification of the subject property. Petitioners are also protesting the 2014 and 2015 actual value of the subject property.

The subject property is described as follows:

**610 Snowshoe Lane, Cimarron, CO**
**Lot 17, Block 15, Arrowhead Filing No. 2**
**Gunnison County Account No. R012071**

Petitioners and Respondent stipulated to admission of Petitioners' Exhibits 1-13 and Respondent's exhibits A-F.

Docket Nos. 70194 & 70195 were consolidated for purposes of this hearing.

## Description of the Subject Property

The classification appeal involves the relationship between two legal and platted residential lots located in the Arrowhead Filing No. 2 Subdivision in the unincorporated community of Cimarron, CO. The subject is a vacant buildable residential lot classified as *vacant land* by Gunnison County. This lot contains 1.0 acre, is treed, circular in shape, has varying topography, and has seasonal access. Electric and domestic water are available, but not

installed. All roads in the subdivision are maintained by the homeowner's association. County records indicate that this lot was acquired by Petitioners in August of 2013 for $12,000. According to testimony, there are no residential or recreational real property improvements on the subject.

Petitioners own an additional residential lot which is not a subject of this appeal, located at 652 Snowshoe Lane nearby the subject. Unlike the subject parcel, this lot is improved with a ±1,650 square foot residence and is classified as *residential* by Gunnison County. This improved parcel also consists of 1.0 acre of land, and the land and the improvements (house) were purchased by Petitioners in 2010. Access to this parcel is via privately maintained driveway. According to the testimony and exhibits, there is a ±20 foot common area buffer, owned by the homeowner's association (HOA), between the subject lot and the improved residential lot. It is the relationship between this improved lot and the subject lot that is in dispute by the parties concerning the vacant lot's classification.

Applicable Law (Classification)

Respondent has placed vacant land classification on the subject during the 2014 and 2015 tax years. Petitioners argue that the subject parcel should be re-classified as residential land during the tax years in question.

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

> "a parcel or contiguous parcels of land and 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 Assessors Reference Library (the ARL), Volume 2, Section 6.10, 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." 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 ARL 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 ARL 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 ARL 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

Petitioners' first witness, Richard Krohn testified that the subject lot was heavily treed, received substantial seasonal snowfall, and was used for year-round recreational purposes by Petitioners. Uses include hiking, picnicking, Nordic skiing, and snowshoeing. Mr. Krohn also testified that Petitioners had completed some fire mitigation on the subject, that there were no site (e.g. fencing) or vertical improvements. Mr. Krohn also indicated that common area needed to be crossed to access this lot from the residence, that the lot had only residential rather than commercial uses, and opined that the lot would most likely be sold as a unit with the residential property.

Petitioner, Kathleen Krohn was called as the second witness and reiterated the testimony of Richard Krohn, specifically that the subject was used for the recreational uses noted above and that the common area between the subject lot and the residential lot belonged to the HOA. Further, Ms. Krohn testified that she was a member of the HOA, and that this common area was for the benefit of the individual property owners.

Respondent presented the testimony of William Spicer, a Senior Appraiser with the Gunnison County Assessor's Office. Mr. Spicer testified that he did not inspect the property; however, it was inspected and photos taken by an appraiser in his office. Mr. Spicer agreed that the subject was heavily treed, generally level, and the lot was circular in shape and marked with a center pin. This witness further testified that there was no view protection or additional privacy afforded to the residential property by the subject. Additionally, there was no septic, driveway, or structures on the subject that would indicate that it was used as a unit.

The Board's Findings (Classification)

The burden of proof in the 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 that the subject meets the definition of "residential land" which is defined in Section 39-1-102(14.5)(a), C.R.S. as meaning "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."

**Common ownership**

For tax years 2014 and 2015, county records reflect the following ownership for the residential and the subject lots.

| Parcel | 1-1-2014 | 1-1-2015 |
|---|---|---|
| Residential Lot | Kathleen B. Krohn | Kathleen B. Krohn |
| Subject Lot | Kathleen B. Krohn, Richard H. Krohn, Ronald Treche, Ann Treche | Kathleen B. Krohn, Richard H. Krohn, Ronald Treche, Ann Treche |

Based on the above ownership structure for the subject lot and the residential lot, as well as the Board's interpretation of the intent of Statute and the ARL, there is no common ownership between these two parcels.

**Contiguity**

The contiguity of the subject lot and the residential lot is also in dispute. Factually, the two lots are separated by the 20 foot common area under different ownership. The subject lot and the residential lot do not touch at any point or along any boundary. Petitioners reference *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 relative to the subject. The Board finds the two parcels are physically separated by a 20 foot open space buffer zone that has different ownership. The Board concludes the subject lot and the residential lot are not considered contiguous.

**Use as a Unit**

The Board was not persuaded that the occasional recreational use of the subject including temporary access, seasonal hiking, picnicking, Nordic skiing, and snowshoeing, and some fire mitigation supported a conclusion that the subject was "used as a unit" with the residential property. In addition, the Board was not persuaded by the claim that the subject lot would most likely be sold as a unit with the residential lot.

The Board finds that Respondent had correctly applied Section 39-1-102(14.5(a) and the procedures contained in the ARL, which are binding upon the county assessors, *see Huddleston v. Grand County Board of Equalization*, 913 P.2d 15 (Colo. 1996), in determining that the subject parcel does not meet the definition of residential property.

Classification Conclusion

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2014 and 2015. Based on the lack of common ownership, contiguity, as well as the absence of the subject being an integral part of the residence (or used as a common unit with the residence), and the Board's interpretation of the language found in statute and the ARL, the subject lot is not entitled to residential classification for tax years 2014 and 2015.

Valuation of the Subject

Relative to the valuation of the subject, Respondent presented the following assigned and appraised values for tax years 2014 and 2015. Petitioners are requesting a value of $12,000 for the subject for both tax years.

| Tax Year | Assigned Value | Appraised Value |
|---|---|---|
| 2014 | $24,800 | $20,000 |
| 2015 | $16,990 | $17,000 |

Petitioners contend that the August of 2013 purchase of the subject lot for $12,000 is the market value that should be placed on the lot for the 2014 and 2015 tax years. Petitioners provided no sales, other than the sale of the subject, to support their concluded value.

Respondent argues that pursuant to Section 39- 1-104(10.2), C.R.S. and the ARL, Petitioners' vacant parcel was subject to a 2013 reassessment cycle for the 2014 assessment year, meaning that the data collection period for that assessment year was January 1, 2011 to June 30, 2012, or the 18 months prior to July 1, 2012. Thus, contrary to Petitioners' claims, the August 2013 purchase cannot be used to value the subject lot for the 2014 assessment year.

Respondent further argues that although the 2013 purchase is within the data gathering period for the 2015 assessment year, the Board should find that it is not convincing evidence of value. Although Respondent's witness William Spicer, a Colorado Ad Valorem Appraiser with the Gunnison County Assessor's Office considered the 2013 sale, he came to the conclusion that it was a below market value transaction because it had the single lowest sales price out of 77 sales in a 60 month timeframe. As Mr. Spicer testified, analysis of sales from the last 12 months of the data gathering period of lots that were very similar both in location and character to the subject lot indicated that the Assessor's original value of $16,990 was fully supported by market data. Respondent further argued that the Board should afford little weight to the 2013 sale, and find that Petitioners failed to meet the burden to establish a $12,000 value for the subject lot.

Valuation Conclusion

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing and acknowledging the data gathering period for each tax year, the Board concludes that Respondent's comparables are similar to the subject and that Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015. Further, Petitioners presented insufficient probative evidence to support Petitioners' contention that the 2014 value of the subject property should be reduced below the $20,000 value recommended by Respondent.

## ORDER:

The Board upholds the subject's 2015 value of $16,990.

The Gunnison County Assessor is directed to reduce the value of the subject property to $20,000 for the 2014 tax year.

## 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 13th day of February, 2018.

**BOARD OF ASSESSMENT APPEALS**

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

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

Milla Lishchuk