BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **KATHLEEN KROHN,** v. Respondent: **GUNNISON COUNTY BOARD OF COMMISSIONERS**	**Docket Nos.: 70195**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on January 11, 2018, Debra A. Baumbach and James R. Meurer presiding. Petitioner was represented by Barbara Butler, Esq. Respondent was represented by Matthew Hoyt, Esq. Petitioner is protesting the 2015 classification of the subject property.

The subject property is described as follows:

700 Hazel Lake Dr. Cimarron, CO
Lot 21, Block 15, Arrowhead Filing No. 2
Gunnison County Account No. R011735

Petitioner and Respondent stipulated to admission of Petitioner's 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

This 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 heavily treed, circular in shape, has a slight slope, 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 Petitioner in 2014 for $21,000. According to testimony, there are no residential or recreational real property improvements on the subject.

Ms. Krohn owns 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 Petitioner 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.

Applicable Law

The value of the subject is not in dispute; the parties only dispute the classification of the subject during the 2015 tax year. Respondent has placed vacant land classification on the subject during the 2015 tax year. Petitioner argues that the subject parcel should be re-classified as residential land during the tax year 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

Petitioner's first witness, Richard Krohn, husband to Petitioner, testified that the subject lot was heavily treed, received substantial seasonal snowfall, and was used for year-round recreational purposes by Petitioner. Uses include hiking, picnicking, Nordic skiing, and snowshoeing. Mr. Krohn also testified that Petitioner had completed some fire mitigation on the subject, that there were no site (e.g. fencing) or vertical improvements, and that the deck of the residence had a view of this lot. 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

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 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(14.5)(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

The parties agree that there is a commonality of ownership between the subject parcel and the improved residential parcel. County records indicate that both parcels were owned by Kathleen B. Krohn for tax year 2015.

Contiguity

The contiguity of the subject lot and the residential lot is 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.

Conclusion

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2015. Based on the lack of 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 year 2015.

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 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

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

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