

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p>	<p><b>Docket No.: 75784</b></p>
<p>Petitioner:</p> <p><b>PERRY LYNN LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ROUTT COUNTY BOARD OF EQUALIZATION.</b></p>	
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 22, 2020, Gregg Near and Debra A. Baumbach presiding. Abby Schissler (75% owner) and James Gantz (25% owner) appeared on behalf of Petitioner. Respondent was represented by Lynaia South, Esq. Petitioner is protesting the 2019 classification of the subject lot.

**EXHIBITS AND WITNESSES**

The Board admitted into evidence Respondent’s Exhibits A through F, and I, and Petitioner’s Exhibits 1 through 11. The Board designated as experts Respondent’s witnesses Gary Peterson as both the Routt County Assessor and a Certified Residential Appraiser, and Chad Phillips as a Certified Residential Appraiser.

**DESCRIPTION OF THE SUBJECT PROPERTY**

The hearing before the Board was primarily concerned with the classification of Reception Number R3205410, a reported 1.65 acre area enclosed by Reception Number R320831 containing a reported 4.16 acres. *See Ex. 2, p. 2.* Combined, these reported acreages would total 5.81 acres. *See id.* The Board finds that the total property contains 6.01 acres more or less and is legally described by a single metes and bounds description. *See Ex. 6, p. 2.* The Board notes the discrepancy regarding the total size of Reception Number R320541 and R320831 of 5.81 acres and the 6.01 acres previously described.

As a whole, the two parcels are currently classified as mixed use. Petitioner contends that Reception Number R3205410 should be classified as residential property.

After review and careful consideration of the testimony and the exhibits provided by both parties the Board finds Petitioner has provided insufficient probative evidence to persuade the Board.

### **BURDEN OF PROOF**

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's classification is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of the Board of Assessment Appeals, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993).

### **ASSESSORS' REFERENCE LIBRARY**

#### **I. Classification Generally**

When assessing taxable property, assessors must follow the guidelines established in The Assessors' Reference Library. *See also* § 39-1-104(11)(a)(I), C.R.S. (2019). The Assessors' Reference Library provides the following criteria for determining the classification of property:

The primary criterion for classification is the *actual use* of the land on the assessment date. When actual use cannot be determined through physical inspection, the property owner should be contacted. The assessor may also consider such things as *zoning or use restrictions, historical use, or consistent use*, in determining land use. When unable to determine actual use, the assessor may consider the land's most probable use, as of the assessment date, based on the best information available.

Assessors' Reference Library Volume 3 at 2.3 (revised 1/20) (emphasis added).

The Court of Appeals also recognizes these factors in determining property classification. *See, e.g. Vail Associates v. Board of Assessment Appeals*, 765 P.2d 593 (Colo. App. 1988) (zoning); *O'Neil v. Conejos Cnty. Bd. of Comm'rs*, 395 P.3d 1185 (Colo. App. 2017) (actual use, zoning, and reasonable future use).

#### **II. Classification as Mixed Use**

Mixed use classification appears to have been reserved for properties that have discrete or separate areas that can be simultaneously occupied or used for both commercial and residential purposes. *See O'Neil v. Conejos Cty. Bd. of Comm'rs*, 395 P.3d 1185, 1189 n.3 (Colo. App. 2017); *see also* § 39-1-103(9), C.R.S. (2019). The Assessors' Reference Library requires mixed use classification as follows:

Hotels and motels are classified, valued, and assessed as commercial property unless documentation exists to support a classification as mixed-use property. To be classified as a mixed-use property, the hotel or motel property owner and/or operator must be able to document the use of any portion of the property as residential property. Specifically, evidence of overnight accommodation that is leased or rented for thirty consecutive days or longer by the same person or business entity must be provided.

Assessors' Reference Library Vol. 2 at 6.27 (revised 1/20).

### **THE BOARD'S FINDINGS AND CONCLUSIONS**

Petitioner maintains the 6.01 acre property, herein described as the "Larger Parcel," is incorrectly classified as mixed use by the Routt County Assessor. This classification includes Reception Number R3205410, herein described as the "Smaller Parcel." Petitioner contends the Smaller Parcel should be classified as residential. After review of Petitioner's Exhibit 6, pages 2-3, the Board determines the Larger Parcel is encumbered by the Josfan Residence Final PUD Plan with a final approval date of 04-06-2004. The PUD limits the uses to nightly rentals with a maximum of 28 overnight guests and company retreats, family reunions and weddings with a maximum of 200 guests. The final PUD Plan constitutes a Special Use Permit. The proper property classification is not residential.

Petitioner testified Reception Number R320831, the reported 4.16 acre portion of the Larger Parcel, has been operated as a VRBO (Vacation Rental by Owner) since Petitioner's purchase. The Smaller Parcel is identified as the "Lodge" and is sometimes used by Petitioner as a residence by family and friends and is otherwise offered as a VRBO. The remainder of the Larger Parcel contains two residential structures identified as the "Cottages" and the "Overlook." In total, the property can offer rentals for up to 28 guests as allowed by the PUD. The Board is unconvinced by testimony that the Larger Parcel is not operated as a business. Specifically, ownership by Perry Lynn LLC, an entity with other real property assets; payments by Ms. Schissler for "business advice"; payments to Ms. Schissler for advertising, management, health insurance etc.; advertised services for changes of linen, shuttles and shopping; as well as a County requirement for a Certificate of Liability Insurance all point to uses not compatible with typical residential property. Petitioner's claim of not for profit operation is contradicted by Respondent's reporting of significant annual gross rental income.

In this regard the Board was swayed by Respondent's report questioning Petitioner's primary use of the Smaller Parcel as a residence. Exhibit I, pages 2 and 3, illustrates only 58 days of occupancy by family and friends from 2017 to January 21, 2019.

Primarily the Board finds the entire property is contained within one legal description and the PUD does not separate the larger parcel into two parts. The Board also finds the division of the Larger Parcel into two reception numbers does not serve to support Petitioner's claim of separate parcels. Respondent's illustration of the separation (Ex. A, p. 9) demonstrates the claim to be unreasonable as the division clearly bisects existing improvements.

Different classifications for largely undefined portions would seem to violate the intent of the PUD. In any case division of the larger parcel would require amending the PUD that is currently the only legal use allowed.

### **ORDER**

The Petition is denied.

### **APPEAL RIGHTS**

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. 2019.

**DATED and MAILED** this 8<sup>th</sup> day of April, 2020.

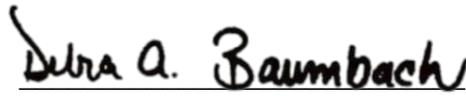
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:

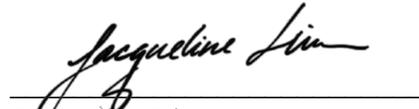


  
Gregg Near

Concurring Board Member:

  
Debra A. Baumbach  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*

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

  
Jacqueline Lim