

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROGER BAUMAN,</p> <p>v.</p> <p>Respondent:</p> <p>CLEAR CREEK COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Richard W. Toussaint, Esq. Address: Toussaint, Nemer & Coaty P.C. 3081 Bergen Peak Drive Evergreen, Colorado 80439 Phone Number: (303) 674-0800 E-mail: rtoussaint@tnclaw.com Attorney Reg. No.:</p>	<p>Docket Numbers: 40220 and 40221</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2003, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by Richard W. Toussaint, Esq. Respondent was represented by Robert W. Loeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Sub: Bauman Division, Tract 1 and 2
(Clear Creek County Schedule No. R017076 and R017077)**

Petitioner is protesting the 2002 actual value of the subject property, two vacant land tracts known as Tract 1 (21.36 acres), and Tract 2 (10.69 acres). The subject tracts are adjacent to Petitioner's residential parcel.

ISSUES:

Petitioner:

Petitioner contends that the two subject lots should be classified as residential, as they are adjoined to Petitioner's residential property and used as a single property for residential purposes. There has been no change in the use of the properties since their purchase. The subject properties are incorrectly classified as vacant land and should be classified residential. The subject properties are being treated differently from the properties owned by three other property owners, solely due to their recent subdivision.

Respondent:

Respondent contends that the property has been classified as vacant land from the time the cabin was removed. The subject properties are two separate lots that were subdivided subsequent to purchase. Respondent believes the primary reason for the subdivision is to sell the two lots separately from the residence; they are not a necessary part of the adjacent residential parcel. Petitioner's only basis for residential classification is that the subject properties are commonly owned, contiguous parcels. The recreational activities are not in conjunction with the residential improvements; they also occur on land owned by other people and are therefore not necessary to the use of the residence.

FINDINGS OF FACT:

1. This is a consolidation of docket numbers 40220 and 40221.
2. Petitioner's witness, Mr. Andrew Dennis Smith, Petitioner's stepson, testified that he is familiar with the subject properties. They were acquired in the mid-1980's and he has been to the property before and since purchase.
3. The subject properties are located in a mountainous area in the Evergreen Valley. They are treated as one piece of property, not three pieces. All the properties were cleared of brush as though one property this summer. The properties are also used as a whole for recreation purposes. The second parcel was purchased and subdivided due to easement issues regarding the residential parcel. The 35 acres was purchased he believes in 1994, 4 years after the home was built on the Bauman's residential lot; they have been used together for the last nine years.
4. The property is rustic, hilly, and has beautiful rock outcroppings. It was rezoned due to a driveway easement that went across the larger parcel to get to the residential parcel. The add-on acreage was assimilated into the main piece of property so that the driveway was on the same

property as the main residence. There are no fences separating the three properties owned by Mr. Bauman. Their activities include picnicking, day hikes, walking the dogs, etc.

5. The subject property was an old logging camp. The trails go into the national forest and are only large enough for an All Terrain Vehicle (ATV). The road signs shown in the submitted photographs were posted before the subdivision occurred; they do not necessarily indicate accessible roads. Each year several Christmas trees are cut for family members. There are mountain goats, bear and elk located on the property. They have been clearing off thatch and trees and there are photographs of stacks of firewood.

6. There is only one house on the property. The use has not changed since the subdividing of the larger tract. There is nothing that prevents the use of the property other than some parts are not accessible due to steep terrain. He considers the property to be one; it is not fenced and the “paper” lines were not a consideration when they were cleaning them up this summer.

7. Under cross-examination, Mr. Smith testified that he has visited the property monthly, since the mid 1980’s. He assisted in the construction of the residence in the 1990’s. The adjacent subject properties were purchased a few years after the house was built. The vacant property was hiked before it was purchased. The Baumans walk the dogs on all of the property, both the residential and the neighboring vacant property that was later purchased. The ATV’s were purchased later in time. He does not know when the pictures were taken. He has snowmobiled, hiked, and picnicked the vacant property. He does not know where the property lines are in the trail system. His kids snowboard the subject properties and also elsewhere. He was not personally involved in the subdivision of the property. A well was dug in the process of the subdivision. The residence has its own well.

8. Upon questioning by the Board, Mr. Smith testified that the woods were cleared to deter fire hazards and make the property more accessible. There was a verbal agreement to use the adjoining properties prior to their purchase. The improved property is the Baumans’ principle residence. All of the utilities are located on the original five acres. There was a shack on the 35 acres that was later removed; only a wood deck remains, which is used as a point of observation by family members when hiking.

9. Petitioner’s adverse witness, Ms. Diane Settle, a Certified General Appraiser and the Clear Creek County Assessor, testified that the determination of vacant versus residential use of adjoining parcels is a matter of opinion, based on a number of factors, such as common ownership and if it is used to support the enjoyment and non-commercial activities of the residential property. Aspen Lane has not been traveled very much, there is a tree in the center of the road as shown on the submitted photographs. She has classified the house parcel as residential and Tracts 1 and 2 as vacant land. Prior to the Baumans’ purchase, the 35-acre tract was classified residential as there was a cabin located on it. In 1993, they inspected the 35-acre tract and the cabin was gone; as of January 1, 1994, the 35-acre tract was reclassified to vacant land. When the property was subdivided, she put the pink land portion shown on Respondent’s Exhibit 3 to a residential classification, as it is part of the house parcel. There had been no change in use in the property. Her opinion has not changed as to the use of the property and the classification; the Baumans just went through the process of

creating two lots, which to her means it is vacant land and will not be sold as a unit, though she admits it could be sold as a unit. The three properties do have common ownership.

10. The Bauman's property was already classified as vacant land when it was subdivided, and she left it classified as vacant. The Baumans went through a long subdivision process and she believes the intent was for vacant land.

11. Petitioner's Exhibit A indicates that the subject properties were subdivided for estate planning purposes.

12. Petitioner is requesting a 2002 classification change to residential with the residential assessment rate applied to the two vacant land parcels.

13. Respondent's witness, Ms. Diane Settle, the Clear Creek County Assessor, testified that at the time the subject was purchased by the Baumans, it was classified as residential as it had a house/shack/cabin on it. The cabin was removed and it was reclassified to vacant land. She treats the area shown with red lines and the pink portion of Petitioner's Exhibit 3 as a single parcel.

14. Regarding the Chisholm subdivision of land in Exhibit 1, page 34, the house was built on Parcel 6C and was subdivided in November of 1990, as well as the Hinds parcels. Chisholm then put the other two properties up for sale and she continued their classification as vacant land. Parcel 6A was sold in 1993, but Parcel 6B did not sell. She classified both Parcels 6C and 6B as residential; Mr. Chisholm had not been able to sell 6B. Parcel 6B would be very difficult to build on and they were using it as part of their residence.

15. Regarding the Hinds parcels, the Hinds kept Parcel 7C and put Parcels 7A and 7B up for sale. The Eilers purchased both parcels in October of 1991. The Eilers built their house on 7B and the driveway and gate are located on 7A, which makes it a part of the residence. The Occhionero's property was classified residential by a court judgment.

16. Ms. Settle testified that the Division of Property Taxation (DPT) excerpt on page 53 of Exhibit 1 speaks to the classification of contiguous parcels. She considered these criteria when making her determination. Regarding criteria 1, since it was subdivided, she did not consider it a common unit with the residence. As to criteria 2, since the parcel was recently subdivided, she did not think the tracts would be conveyed with the residence as a unit. For criteria 3, if the primary purpose was to be with the house, they could have combined them with the house parcel. The county has a process that is free that allows people to combine a vacant parcel with their residential parcel, and this process was available to Petitioner.

17. Under cross-examination, Ms. Settle testified that she is not saying that there is no building site for Chisholm Parcel 6B. Regarding the 3 criteria on page 53 of Exhibit 1: Criteria 1) yes the Chisholms had also subdivided their lot, but some time had passed. The Eilers bought their lots together, and there is the driveway and the gate on the other lot. The Court found the same thing with Occhionero's property; Criteria 2) the lots would not have to be sold with the house. The Chisholms could sell one lot and not the other, same as the Eilers and the Occhioneros; Criteria 3) the Chisholms, Eilers, and Occhioneros could have utilized the combining process. She has no evidence that the subject parcels have not been used for the enjoyment of the Baumans. She

admitted that there is no time limit before property can be reclassified in the criteria. She admitted that the Baumans have owned the property for over ten years, have not attempted to sell it and have not done any commercial activities. She assumes they enjoy the property.

18. Upon questioning by the Board, Ms. Settle testified that the primary reason the subject properties are classified as vacant land is due to their recent subdivision.

19. Respondent's witness, Lisa Leben Bogel, Land Department Director for Clear Creek County, testified that she was the land use case manager for the division of land application. Regarding the well on the blue tract shown on Respondent's Exhibit #3, it is an existing well that was drilled in April of 1998; every application for division requires an adequate supply of well water. The subdivision application was made in May of 1998. The subdivision plat was effective as of the recording of the plat, which occurred on September 13, 2000. She conducted three site inspections of the subjects between May and November of 1998. Mr. Bauman told her he wanted to add more land to his existing site as a buffer. She testified as to the expense and requirements for subdivision in Clear Creek County.

20. Respondent assigned a vacant land classification and assessment rate to the subject properties for tax year 2002, with the following actual values:

<u>Docket #</u>	<u>Schedule #</u>	<u>Actual Value</u>
40220	R017077	\$ 34,880.00
40221	R017076	\$ 87,160.00

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2002.

2. The Board examined the definition of residential land, C.R.S. 39-1-102 (14.4), which states: "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and which is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term does not include any portion of the land which is used for any purpose which would cause the land to be otherwise classified. The term also does not include land underlying a residential improvement located on agricultural land.

3. The subject properties share common ownership and are contiguous to Petitioner's residential property. Petitioner's witness testified that the subject properties are used as a unit with the residential property for activities such as dog walking, picnicking, hiking, snowboarding, etc. The properties are not separately fenced and are divided into tracts that are not delineated by changes in surface use; the property lines are identifiable on paper. The subject properties appear to meet the definition of residential land in C.R.S. 39-1-102 (14.4).

4. The Board also examined the criteria list from the Division of Property Taxation, Assessor's Reference Library excerpt contained in Respondent's Exhibit 1, page 0053. Petitioner's

witness has testified that the parcels are considered and actually used as a common unit with the residence, meeting criteria #1. Regarding criteria #2, it is unknown if the subject properties would be sold as a unit with the residence. The properties are legally separable and could be sold independently of the residence. As the properties are recently subdivided, it is unclear if they will be sold separately; such a disposition can only be speculated; Petitioner's written documentation states that the properties were divided for estate planning purposes. Regarding criteria #3, Petitioner's witness has testified as to the activities that traverse the residential property as well as the subject properties. The Board heard no testimony disputing that the properties were bisected with trails used for hiking, picnicking, dog walking, and other recreational uses. The properties appear to fit criteria #3 in that the primary purpose is for the support, enjoyment or other non-commercial activity of the occupant of the residence.

5. After careful consideration of all the testimony and evidence presented, the Board concluded that the 2002 classification of the subject properties should be residential, with the residential assessment rate applied.

ORDER:

Respondent is ordered to reclassify the subject properties for year 2002 to residential.

The Clear Creek County Assessor is directed to change her records accordingly.

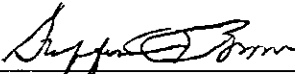
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.


If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 15th day of March, 2003.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

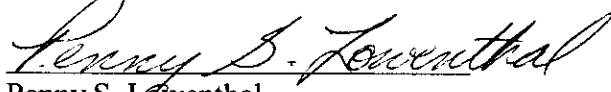


Karen E. Hart

This decision was put on the record

MAR 14 2003

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



Penny S. Lowenthal

