

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>DIANE S. JAYNES AND FRED C. KINAT, JR.,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Fred C. Kinat, Jr. Address: P.O. Box 2454 Breckenridge, Colorado 80424 Phone Number: (970) 453-2975</p>	<p>Docket Number: 40539</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 25, 2003, Debra A. Baumbach and Karen E. Hart presiding. Petitioners appeared pro se. Respondent was represented by Frank Celico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**303 North Main Street, Breckenridge, Colorado
(Summit County Schedule No. 303506)**

Petitioners are protesting the 2002 actual value of the subject property, a three-building bed and breakfast located on a 0.315-acre site in Breckenridge, Colorado.

ISSUES:

Petitioner:

Petitioners contend the subject property has been overvalued. It consists of two historic buildings and a new building located at the back of the property. The property should be classified as residential. The rental rooms are the only areas that should be classified as commercial. The subject property is a traditional bed and breakfast operation.

Respondent:

Respondent contends that the subject property has been correctly valued and classified as a mixed-use property. The subject property is not a traditional bed and breakfast.

FINDINGS OF FACT:

1. Mr. Fred Kinat, Jr., Petitioner, presented the appeal on behalf of Petitioners.
2. Mr. Kinat testified that they purchased the historic Williams House in 1984. It was not livable, so they fixed it up and started a bed and breakfast in 1987. In 1990, they purchased and moved the Willoughby Cottage from downtown and restored it to be part of the bed and breakfast, which it was a part of until 1994 when the Barn Above The River (the Barn) was built. They later started renting the cottage for accommodations only. The cottage is no longer a part of the bed and breakfast operation. The housekeeping staff uses the Williams House as a dwelling. The Barn has five rental rooms and an apartment, which is located at the north end of the building.
3. Mr. Kinat testified that the Williams House has two parlors (front and rear), a breakfast room and a kitchen, seven bathrooms, and a laundry facility. The Barn has five rental rooms, five bathrooms, one guest living area, a kitchen, a sitting room in the apartment, and an office. The owner's area consists of one bedroom, one and one-half baths, a kitchen and dining room, and a one-car garage.
4. Mr. Kinat testified that the subject property is located in an historic district.
5. Under cross-examination, Mr. Kinat testified that the Willoughby Cottage is not part of the bed and breakfast. It is typically rented for three or four night stays. It is rented as a honeymoon cottage.
6. Upon questioning by the Board, Mr. Kinat testified that he believes the Willoughby Cottage should be classified as residential. It has a bathroom, a bedroom, a sitting room, and a kitchenette with a microwave, refrigerator, sink, countertop and drawers; there is no range.

7. Petitioner is requesting a 2002 classification of 71 percent residential and 29 percent commercial property.

8. Respondent's witness, Mr. Michael Peterson, a Licensed Appraiser with the Summit County Assessor's Office, presented the following indicators of value:

Market:	\$1,416,327.00
Cost:	\$ 991,138.00
Income:	\$ 815,339.00

9. Mr. Peterson testified that the subject property is known as the "Bed and Breakfasts on North Main Street" in Breckenridge. He has taken various classes offered by the Division of Property Taxation (DPT) and the International Association of Assessing Officers (IAAO) regarding bed and breakfasts and the classification of properties.

10. Mr. Peterson testified that property is valued according to its actual use as of the assessment date, which is January 1, 2002. Willoughby Cottage was moved to the site in 1990 and was used as a shop until 1994, when it was changed to a bed and breakfast room. The property is used as residential and commercial short-term lodging; there is a shared use. All of the subject property area that is not restricted and is available to guests is classified commercial; the area not available to guests is classified as residential.

11. The Barn Above The River has a separate apartment area consisting of a bedroom, one and one-half bathrooms, separate kitchen and living room and a garage that is considered residential.

12. The Williams House was originally a single-family building and has been remodeled twice with added bedrooms. Two bedrooms and bathrooms are reserved for employee housing and are classified residential. The balance of the building is not a residence – the housekeeper is not a homeowner; there is no shared residential use.

13. Of the subject property's total improvement square footage of 7,441, 1,748 square feet are classified as residential use, with the remaining portion classified as commercial use. It has always been classified as a mixed-use property. The DPT guidelines were not intended for this type of property.

14. Under cross-examination, Mr. Peterson testified that a manager is not the same as an owner use - it is a condition of their employment. There is no exclusive right to use as a resident, they are not the owner, and they cannot determine when the property would be rented or how it is used.

15. Mr. Peterson concluded to a value of \$1,416,327.00, relying primarily on the market approach.

16. Respondent assigned an actual value of \$1,354,837.00 to the subject property for tax year 2002, with \$325,160.00 (24%) allocated as residential value and \$1,029,677.00 (76%) allocated as commercial value.

CONCLUSIONS:

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

2. Petitioners argued that the DPT Bed and Breakfast valuation guidelines state that the disputed common areas, when used by the owners as well as the guests, are to be called common areas and assessed residentially. The Board has previously determined that the assessor has the discretion to determine whether the common areas are integral and primarily designed to the residential use of the property. The Respondent's witness conducted a physical inspection of the subject property, determined that the subject areas in dispute were predominantly used and designed for commercial purposes, and were not integral to the residential portion of the property.

3. The DPT guidelines define residential area as "...the rooms and/or floor areas within the improvement(s) that are used exclusively by the owner or manager as their residence. Access to these areas by paying guests is restricted by the owner..." Respondent has classified 508 square feet of the Williams House as residential to account for the employee housing. The owners' apartment in the Barn Above the River functions as a separate entity, without the use of any of the disputed areas. Petitioners' use of the remaining areas of the bed and breakfast is incidental and secondary, not primary use. Therefore, we find that the disputed common areas are not an integral part of the residential use and have been properly classified by Respondent as commercial use.

4. Regarding the Willoughby Cottage, this building originally functioned as a shop. It was moved to Petitioners' property and subsequently remodeled for use as part of the bed and breakfast. It is marketed in the same brochure as the remaining two properties and testimony indicated that it is often rented as a honeymoon suite. It is rented for average occupant stays of three to four nights. The Board has determined that this building is primarily used for short-term lodging and does not meet the definition of residential property.

5. After careful review of all of the evidence and testimony presented, we affirm Respondent's assigned actual value and allocation of said value at 24% residential use and 76% commercial use.

ORDER:

The petition is denied.

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 21st day of October, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

OCT 21 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

