

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>JACK L. WHITT AND JOE MABEE,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Malcolm R. Smith Rocky Mountain Property Tax Consultants</p> <p>Address: P.O. Box 1592 Carbondale, Colorado 81623</p> <p>Phone Number: (970) 963-8646</p>	<p>Docket Numbers: 42505 and 42507</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 23, 2004, Judge Nuechter and Karen E. Hart presiding. Petitioners were represented by Mr. Malcolm R. Smith. Respondent was represented by Franklin P. Celico, Esq. Petitioners are protesting the 2003 actual value of the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**85 Tiger Run Road, Lot 318 and Lot 309, Breckenridge, Colorado
(Summit County Schedule Nos. 6501491 and 6501482)**

The subject properties consist of a 3,116 square foot vacant lot and a 4,507 square foot vacant lot, both located in the Tiger Run Resort Park, Breckenridge, Colorado.

ISSUES:

Petitioners:

Petitioners contend that Respondent improperly classified the subject properties. The properties should be classified as residential property.

Respondent:

Respondent contends that the subject properties do not meet the definition of residential property and have been properly classified as commercial lodging land.

FINDINGS OF FACT:

1. The subject properties consist of two lots under separate ownership located in Tiger Run Resort Park, a Planned Unit Development (PUD). The park consists of individual lots under various ownerships that are used for recreational lodging purposes. Lots are used by the owners or rented to others for short-period use. The use of a particular site by the same occupant is restricted to no longer than six months at a time, with a maximum of eight months occupancy per year.

2. Some of the lots in the development have “Chalet” buildings located on them that are either occupied by the property owner or rented to others on a short-term basis. The Chalets are manufactured homes that are affixed, though not permanently attached, to the ground; the tires are deflated to level them on the property, the hitches are unbolted and laid under the frame, and the structure is skirted. The Chalets remain on-site for a significant amount of time, though some have been moved and sold. There are no time limits for a Chalet to remain on a lot, only occupancy limits. Two separate property tax bills are issued: one for the Chalet and one for the lot. The Chalet lots are classified as residential property.

3. Tiger Run also includes recreational vehicle (RV) sites. Recreational vehicles are driven on and off site throughout the year. These sites have the same short-term occupancy limits as the Chalet lots: no longer than six months at a time or a total of eight months per year. The subject properties are RV sites. The RV sites are classified as commercial lodging land.

4. Mr. Malcolm R. Smith of Rocky Mountain Property Tax Consultants, Inc., appeared as a witness and presented the appeal on behalf of Petitioners. Mr. Smith testified that he believes the property classification should be based on use rather than on the type of living quarters. He believes the effective use of the subject properties is the same as condominiums in a rental pool, which are classified as residential properties. Mr. Smith testified that the Petitioners’ primary concern is the classification of the subject properties and that all three approaches to value should be considered: cost, market and income.

5. Petitioner, Mr. Jack L. Whitt, testified that use dictates classification. All of the Tiger Run sites are fully developed to allow someone to live in their RV. The original development concept was that the property was to be used for recreational use; they did not want year-round occupancy. He believes their use is no different than any other condominium complex in Summit County and that they should not be treated differently.

6. Under cross-examination, Mr. Whitt clarified that Lots 318 and 309 are the subjects of this appeal. RVs are located on these lots at varying times of the year. The owner of Lot 309, Mr. Joe Mabee, typically stays on the property for the months of July and August and the property is rented to others for the winter and summer. Mr. Whitt owns Lot 318, which is rented throughout the year. Mr. Whitt owns seven lots in Tiger Run and has parked an RV on another lot that he owns which is not a part of this appeal.

7. Upon questioning by the Board, Mr. Whitt testified that the expected life of a Chalet is 15 years. They can be moved but that is not the intention.

8. Petitioner is requesting that the 2003 classification of the subject properties be residential rather than commercial lodging land.

9. Respondent's witness, Ms. Denise Steiskal, a Registered Appraiser and the Summit County Assessor, testified that she is very familiar with the subject properties and the Tiger Run development. The subject lots are located in a section of the resort specifically designated for RV use only. The lots are finished with a concrete pad, an 8' x 14' log-sided shed and have all utilities available including cable, water, sewer and electricity.

10. Ms. Steiskal testified that the legal status of the lots is a PUD project – it is not condominiumized under the Condominium Act. According to the PUD declaration, lots 249-367, including the subjects, are restricted to use by RVs and travel trailers. No residential structures, including Chalets, can be placed on these lots. The original 1992 covenant declaration, Article 5, states that each lot shall be used only as temporary RV parking with auxiliary vehicles.

11. Ms. Steiskal testified that, based on the fact that there are no improvements (no dwelling or residential structure) on the land and the occupancy use is restricted, the subject properties are similar to a lodging classification. She does not feel that an RV lot meets the guidelines for residential property. She relied on statutes for the definition of residential land and improvements. According to Article X, Section 6 of the Colorado Constitution, RVs and campers are Class C personal property. They are taxed through the motor vehicle department; they are not taxable for ad valorem purposes. They do not meet the definition of a manufactured home. The Division of Property Taxation (DPT) is specific in their guidelines that RVs are temporary.

12. Based on the market approach, Ms. Steiskal presented a value of \$122,500.00 for each of the subject properties. Ms. Steiskal testified that the sales comparison approach is the most appropriate valuation method for the subjects. There were 20-25 comparable lot sales located within Tiger Run that were used to value all Tiger Run lots.

13. Ms. Steiskal testified that all of the Tiger Run lots without Chalets were classified as vacant land prior to 1999. She contacted the DPT regarding the classification of the Tiger Run RV lots and found that the guidelines for the lodging land classification provided examples such as overnight campgrounds. She changed the land classification in 1999 to be more specific to the actual use.

14. In cross-examination, Ms. Steiskal testified that without a residential structure, the subject properties would not qualify for residential classification.

15. Respondent's witness, Mr. Kenneth Beazer, DPT Property Tax Specialist, testified that he inspected the Tiger Run Resort in the late 1990s as requested by Ms. Steiskal. He does not believe the vacant lots meet the classification of residential property. Mr. Beazer frequently deals with the issues of personal versus real property classifications. Title 42 specifically addresses RVs and motor coaches; they are Class C and D personal property. Special ownership tax is levied against an RV, not property tax. RVs are motorized and meet the definition of personal property; they do not meet the definition of a mobile home or a residential improvement. Residential improvements, which are buildings specifically designed as a residence, must be located on a property to be classified as residential. Therefore, the subject does not meet the requirements of residential property.

16. Respondent assigned an actual value of \$122,500.00 to each of the subject properties for tax year 2003, with a classification of commercial lodging land.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2003.

2. The subject properties differ from the Chalet properties in that the Chalets are qualified manufactured housing structures that are affixed to the land. With few exceptions, they are not moved from the site. The subject properties are not condominiumized under the Condominium Act, and therefore, are not controlled by statutes that regulate condominium classification and valuation.

3. 39-1-102 (14.3) C.R.S. defines a residential improvement as "... a building or that portion of a building designed for use predominantly as a place of residency by a person, a family or families... The term also includes mobile homes as defined in section 38-29-102(8) C.R.S. (repealed), and manufactured homes as defined in section 42-1-102(106)(b) C.R.S."

4. 42-1-102(106)(b) C.R.S. defines a manufactured home as "...any preconstructed building unit or combination of preconstructed building units, without motive power, ... which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle."

5. 39-1-102 (14.4) C.R.S. defines residential land as "...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 does not include any portion of the land which is used for any purpose which would cause the land to be otherwise classified..."

6. 39-1-102(14.5) defines residential real property as "residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section."

7. RV's do not meet the definition of residential improvements, as they are not buildings or mobile homes; they have motive power and are licensed as vehicles. Without a residential improvement, the subject properties cannot qualify as residential land. The subject properties do not meet the definition of residential real property.

8. After careful consideration of all of the testimony and evidence presented, the Board affirms Respondent's classification of the subject properties as commercial lodging land and accepts Respondent's assigned value of \$122,500.00 per lot.

ORDER:

The petition is denied.

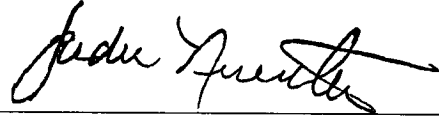
APPEAL:

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 7th day of December 2004.

BOARD OF ASSESSMENT APPEALS



Judee Nuechter




Karen E. Hart

This decision was put on the record

DEC 07 2004

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


Penny S. Lowenthal