BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: DOMINICK AND ANGELO AMARI, v. Respondent: PARK COUNTY BOARD OF EQUALIZATION.	Docket No.: 47302

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 23, 2007 and September 17, 2007, Karen E. Hart and MaryKay Kelley presiding. Dominick Amari appeared pro se on behalf of Petitioners. Respondent was represented by Stephen Groome, Esq. at the May 23 hearing and Herbert C. Phillips, Esq. at the September 17 hearing. Petitioners are protesting the 2006 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

2444 Kiowa Trail, Hartsel, Colorado
(Park County Schedule No. R0030396)

The subject property is a 35-acre site classified "agricultural" with a garage, septic system, and shed. Petitioners are challenging the value of the shed.

Respondent assigned a total value of $112,898.00 to the subject property for tax year 2006 with $1,222.00 assigned to the land, which carried "agricultural" classification, and $111,676.00 assigned to the shed, which carried "residential" classification due to Petitioner's contention that it had been converted to living space.

Respondent recommended a total value of $43,047.00 for the subject property if classified as a "minor structure." Respondent broke down the total value as follows: $1,222.00 to the land with "agricultural" classification, $10,000.00 to the septic system, $13,873.00 to the shed, and $17,952.00

to the garage for a total of $43,047.00. Petitioners agree with "residential" classification assigned to the shed but are requesting the total value recommended by Respondent of $43,047.00.

Mr. Amari testified that the shed was originally purchased for and used for storage, but, because it has been converted to living space and is habitable although unfinished, he contends it should remain under "residential" classification. The interior includes a living room, kitchen with eating space, a second floor bedroom with 6'6" side walls, and a gambrel roof. The kitchen has cabinets and countertops. Water is carried into the house, stored in jugs, and drains to the outside through kitchen sink plumbing. The interior is warmed by a portable propane space heater and a range/oven is connected to a portable propane tank. There is no area within the shed specifically for a bathroom. Two portable toilets are on site but are not plumbed to the septic system. Lights and the refrigerator are operated by two 12-volt batteries powered by 12-volt solar panels with a generator in reserve. Mr. Amari lives out of state and is on site periodically for recreation and to supervise construction but generally not for more than a week each time.

Respondent's witness did not consider the structure habitable nor in compliance with sanitary environmental standards. The building department has not inspected the subject to determine if it is up to code. A certificate of occupancy has not been issued. A space heater does not qualify as an approved heating system, and a 12-volt solar system is considered insufficient power for residential use. The house is not plumbed for water. There is no existing bathroom and no connection to the septic system. There is no independent source of electricity.

The Board finds that the subject's shed does not qualify for "residential" classification based on deficiencies cited by Respondent.

Colorado Revised Statues (C.R.S.) define "residential improvements" as "a building, or that portion of a building, designed for use predominately as a place of residency by a person, a family or families." Colo. Rev. Stat. § 39-1-102(14.3) (2007).

C.R.S. define "minor structures" as "improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose." § 39-1-103(14)(c)(II)(A). "Minor structures consist primarily of garages, sheds, and other minor improvements which are not used in conjunction with a residence, a commercial enterprise, or agricultural land." 2 *Assessor's Reference Library: Administrative and Assessment Procedures* 6.16 (2004).

The Board finds the subject property's shed qualifies as a minor structure and not as a residential improvement. The Board suggests that Petitioners and county officials coordinate their efforts to complete construction in compliance with regulations.

The Colorado Court of Appeals in Mission Viejo addressed whether actual use or original design should establish classification of property for ad valorum purposes. The Court stated that "the statutory scheme as a whole reflects a legislative intent to allow reclassification upon a change of actual use." *Mission Viejo v. Douglas County Bd. Of Equalization*, 881 P.2d 462, 464 (Colo. Ct. App. 1994), *referencing* Colo. Rev. Stat. § 39-1-103(5)(c) (1993 Cum. Supp.). The Board finds

should Petitioners comply with county regulations for a residential improvement at some future date, that statute does not prohibit reclassification to "residential."

ORDER:

Respondent is ordered to reclassify the shed located on the subject property to a minor structure and reduce the actual value of the subject property to $43,047.00 for tax year 2006.

The Park County Assessor is directed to change his records accordingly.

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 Colorado Revised Statutes ("CRS") section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 11th day of October 2007.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

OCT 10 2007

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

Heather Heinlein

47302