BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **ROBERT C. HODGE AND KATHERINE L. DRAPEAU,** v. Respondent: **CLEAR CREEK COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 48280**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on June 5, 2008, Diane M. DeVries and James R. Meurer presiding. Petitioners were represented by Phillip K. Larson, Esq. Respondent was represented by Patrick D. McCarthy, Esq. Petitioners are protesting the classification of the subject property for the 2007 tax year.

PROPERTY DESCRIPTION:

The subject properties are described as follows:

2091 Clear Creek Drive, Georgetown, CO
(Clear Creek County Schedule No. R009199)

1710 Skyline Drive, Georgetown, CO
(Clear Creek County Schedule No. R009242)

The subject properties consist of two single-family detached houses located in a residential area in the town of Georgetown, Colorado. Both properties are non-owner occupied and used as vacation rentals for periods of 30 days or less. Respondent assigned 2007 actual values of $352,890.00 for Schedule No. R009199 and $255,240.00 for Schedule No. R009242. Respondent classified the subject properties as 80% commercial, 20% residential for tax year 2007. Petitioners are not appealing Respondent's valuation of the subject properties; Petitioners are protesting the 2007 classification of the subject property.

Petitioners and Respondent stipulate to the physical characteristics of the subject properties and to the properties meeting the definition of "Residential real property" under Colorado Revised Statutes ("C.R.S.") section 39-1-102(14.5). Both parties also stipulate that the subject properties do not meet the definition of "Hotels and motels" under C.R.S. section 39-1-102(5.5) or "Bed and breakfast" under C.R.S. section 39-1-102(2.5).

Petitioners argue that the properties are single-family houses in a residential zoned area and do not meet the definition of mixed-use commercial, specifically the subcategories of "commercial lodging area" as defined by statute and the Assessor's Reference Library. Petitioners further argue that the houses should be classified as residential and that given the definitional parameters above, commercial classification or a split classification is inappropriate.

Given that the properties have been advertised as and used for vacation rentals, Respondent classified each of the two houses as 20% residential and 80% commercial for ad valorem tax purposes for tax year 2007. Respondent relied on the provisions of C.R.S. section 39-1-103(9)(a) regarding "mixed-use" properties to support the split classification.

"Residential real property" is defined as "residential land and residential improvements, but does not include hotels and motels . . . ." § 39-1-102(14.5). "Residential improvement" is "a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families." §39-1-102(14.3). "Residential land" is a parcel of land "upon which residential improvements are located . . . ." § 39-1-102 (14.4). The Board concurs with the parties' stipulation that the subject properties meet the definition of residential real property.

"Hotels and motels" are defined as "improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care of health facilities to the general public and that are predominantly used on an overnight or weekly basis. . . ." § 39-1-102(5.5).

> 'Hotel units' means more than four unit ownership equivalents in a project that are owned in whole or in part, directly, or indirectly through one or more intermediate entities, by a person or group of related persons who uses the units in connection with a business establishment primarily to provide lodging on a nightly or weekly basis. § 39-1-102(5.5)(c)(III), C.R.S.

2 *Assessor's Reference Library: Administrative and Assessment Procedures* 6.11 (2006). The Board concurs with the parties' stipulation that the subject properties do not meet the definition of hotel/motel.

A property qualifies as a "Bed and breakfasts" if "(a) Lodging accommodations are provided for a fee; (b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and (c) There are not more than thirteen sleeping rooms available for transient guests." § 39-1-102(2.5). The Board agrees with the parties' stipulation that the subject properties do not meet the definition of bed and breakfast.

"Commercial lodging area" is defined as "a guest room or a private or shared bathroom *within a bed and breakfast* that is offered for the exclusive use of paying guests on a nightly or weekly basis." § 39-1-102(3.1) (*emphasis added*). The Board finds that the subject properties do not qualify as commercial lodging areas since they must be part of a bed and breakfast, and the subject properties do not qualify as a bed and breakfast.

The Assessor's Reference Library summarizes the application of mixed-use classification. "When a portion of an improvement is used for residential purposes and a portion is also used for any other purpose, the actual value of each portion of the improvement is determined using the appropriate approaches to appraisal." 2 *Assessor's Reference Library* at 6.16. The Board finds that mixed-use classification is inappropriate for the subject properties since no use of the subject properties falls under a commercial classification.

It is the conclusion of the Board that the subject properties do not meet the definition of commercial use and that there is no basis to justify the split classification of the properties by Respondent.

Petitioners presented sufficient probative evidence and testimony to prove that the properties should be classified as residential for tax year 2007.

ORDER:

Respondent is ordered to classify the subject properties as residential for tax year 2007.

The Clear Creek County Assessor is directed to change her 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 24th day of June 2008.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

James R. Meurer

This decision was put on the record

JUN 2 4 2008

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

Heather Heinlein

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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