

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DANIEL G. HENDERSON,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 56240</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 20, 2011, Sondra W. Mercier, Amy J. Williams, and Louesa Maricle presiding. Mr. Daniel G. Henderson, Petitioner, appeared pro se. Respondent was represented by Martin E. McKinney, Esq. Petitioner is protesting the 2009 classification of the two subject properties and the actual value assigned to one property.

Subject property is described as follows:

**Lot #2 Jaidinger Villas, Westminster, CO and
a portion of Lot 40, Mandalay Gardens, Unincorporated Jefferson County
Jefferson County Schedule Nos. 450722 and 194499**

The subject properties consist of two parcels of land. The first parcel (the "North Parcel"), identified as Schedule No. 450722, is a 2.3-acre site located at the northeast corner of 105th Avenue and Balsam Street within the Westminster city limits. The second parcel (the "Road Parcel"), identified as Schedule No. 194499, is a small tract containing 609 square feet located in the intersection of 105th Avenue and Balsam Street in an unincorporated area of Jefferson County. The southwest corner of the North Parcel touches the northeast corner of the Road Parcel. Both of the subject parcels are classified as vacant land by the Jefferson County Assessor.

Petitioner also owns two lots at the southeast corner of 105th Avenue and Balsam Street. The east lot (identified as Schedule No. 409997) is improved with Petitioner's primary residence and the adjoining west lot (identified as Schedule No. 409996) is vacant land used in conjunction with the

residence parcel. Both of these parcels have residential classification and are not the subject of this appeal, but are integral to the basis for the protest.

The smaller of the two subject tracts, the Road Parcel, is located at the intersection of 105th Avenue and Balsam Street. Balsam Street ends at the Road Parcel, at the north side of 105th Avenue. The south boundary of the Road Parcel is adjacent to the northwest portion of Petitioner's combined residential property. A private road continues south of the Road Parcel along the west side of Petitioner's residential property providing access to other nearby homes.

The subject North Parcel is located at the northeast corner of 105th Avenue and Balsam Street to the north of Petitioner's residence. It is separated from Petitioner's residential property by 105th Avenue, a county road. Petitioner purchased the North Parcel in 2006 for his family's personal use and testified that it has been used for riding all terrain vehicles (ATVs), baseball, and other outdoor recreation pursuits. It has also been used to raise animals for 4H activities, and to shelter, graze, train, and ride the family's horses. Improvements on this parcel in 2009 included a fence and only minor structures to support these activities. The vacant portion of Petitioner's existing combined residential property is also used to support the family's animals. The northeast corner of the Road Parcel touches the southwest corner of the North Parcel, connecting all four parcels owned by Petitioner.

Balsam Street and 105th Avenue are both unpaved roads in this vicinity. Petitioner testified that he, not the County, maintains Balsam Street and 105th Avenue in the vicinity of his properties. Petitioner, with occasional help from neighbors, performs all plowing that is necessary to keep 105th Avenue passable in winter, grades the road, and occasionally provides gravel.

Because the North Parcel is contiguous to Petitioner's residential property through the Road Parcel, and the North Parcel is used to support the enjoyment of the residence, Petitioner contends that the subject parcels are both contiguous to and integral to his residential property.

Petitioner contends that both subject parcels qualify as residential land because they are contiguous to his existing residential property through the Road Parcel and are used as integral parts of the residential property. For the reasons stated, Petitioner is requesting that the classification of the subject parcels be reclassified from vacant land to residential status. Petitioner is also requesting that the 2009 actual value for subject Parcel No. 194499 be increased from \$0.00 to \$600.00.

Tammy J. Crowley, an appraiser with the Jefferson County Assessor's Office, testified as witness for Respondent. Ms. Crowley testified that the subject Road Parcel was not included when the land southwest of Petitioner's residence property was re-platted as Mandalay Gardens Exemption Survey No. 4 in 1992. There are five homes to the east of the 105th Avenue and Balsam Street intersection and three homes to the south that must use this portion of the road to gain access to their properties.

Respondent contends that the Road Parcel does not qualify for residential classification according to the Assessor's Reference Library (ARL) for the following reasons: (1) it is not used in conjunction with Petitioner's improved residential property because it is part of the road that provides access to eight other homes; (2) it was deemed not to be an integral part of Petitioner's residence

because Petitioner excluded it from the Mandalay Gardens platting process in 1992; (3) the primary purpose of the parcel is as a road. It does not offer any enjoyment or support Petitioner's residence located on Lot 2 of Mandalay Gardens; and (4) the Road Parcel would likely not be transferred with Petitioner's residence located on Schedule No. 409997. Respondent contends that the Road Parcel is part of a county maintained road, and therefore classified it as vacant land and assigned no value to the parcel.

Ms. Crowley testified that prior to August 2006, the subject North Parcel was part of a larger parcel of land that included a residence. In 2006, the property was platted dividing the larger parcel into two legal parcels. Respondent contends that the North Parcel does not qualify for residential classification according to the ARL for the following reasons: (1) the subject parcel is not contiguous to land used for a residence; (2) the subject parcel would likely not be sold with the residence across the street (Petitioner's residence) because it is a legal building site and would not be economically feasible to be sold as one unit; (3) the land is not an integral part of the residence as it is not necessary for the support and enjoyment of the residence located across the street. This is evident as it was purchased at a later date.

Respondent assigned a 2009 actual value of \$240,130.00 and vacant land classification to Schedule No. 450722 (the North Parcel). Respondent assigned a 2009 actual value of \$0.00 and vacant land classification to Schedule No. 194499 (the Road Parcel).

The Board reviewed the definitions for "residential land" and "residential improvements." Section 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." According to Section 39-1-102(14.3), C.R.S., the definition of "residential improvements" includes "buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use."

As provided by Colorado case law, a parcel of land can qualify for residential classification in one of two ways: "either by itself containing a residential dwelling unit that is used as such or, alternatively, by having residential improvements other than a dwelling unit and being used as a unit in conjunction with a residential dwelling unit located on a contiguous parcel that is under common ownership." *Sullivan v. Board, Equalization*, 971 P.2d 675, 677 (Colo. App. 1998).

The primary residential parcel must conform to the definition of residential real property as defined in Section 39-1-102(14.5), C.R.S. The Board finds that this requirement is met by the residence located on the lot identified as Schedule No. 409997. The Board finds that the subject parcels are contiguous to Petitioner's residential property and are under common ownership with the residential parcels for tax year 2009. The Board finds that the North Parcel has fence improvements as provided in Section 39-1-102(14.3), C.R.S., so qualifies under the second way listed in *Sullivan* or pursuant to Section 39-1-102(14.4), C.R.S. The Board further finds that the Road Parcel contains none of the improvements provided in Section 39-1-102(14.3), C.R.S., so as to qualify under the second way listed in *Sullivan* or pursuant to Section 39-1-102(14.4), C.R.S. The use of the Road Parcel is as a road and though the Road Parcel is integral to the private road extending along the west side of Petitioner's residential property identified as Schedule No. 409996, it is also integral as an intersection

of Balsam Street and 105th Avenue. Accordingly, the Board concludes that the subject North Parcel qualifies for residential land classification. The Board concludes that the subject Road Parcel was properly classified as vacant land road with no value assigned.

Petitioner presented sufficient probative evidence and testimony to demonstrate that the subject North Parcel qualifies for residential classification and was incorrectly classified for tax year 2009.

ORDER:

The petition to reclassify the North Parcel (Schedule No. 450722) to residential land for tax year 2009 is granted. The petition to reclassify the Road Parcel (Schedule No. 194499) to residential land for tax year 2009 is denied.

The Jefferson County Assessor is directed to change his/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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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).

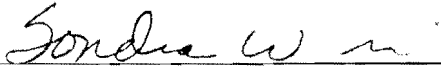
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

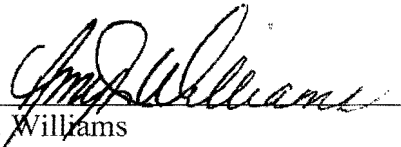
Section 39-8-108(2), C.R.S.

DATED and MAILED this 11th day of August 2011.

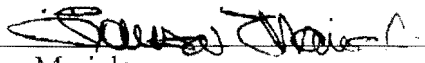
BOARD OF ASSESSMENT APPEALS



Sondra W. Mercier



Amy J. Williams



Louesa Maricle

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



Milla Crichton

