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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JAMES AND BETSY FIFIELD,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF COMMISSIONERS.</p> | <p>Docket No.: 57591</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on August 22, 2011, Debra A. Baumbach and Lyle D. Hansen presiding. Petitioners were represented by Gregory S. Gordon, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioners are protesting the 2008 and 2009 vacant land classification of the subject property. The valuation of the subject property is not in dispute.

Subject property is described as follows:

Lot 2: Fifield Subdivision, Aspen, Colorado 81611

Pitkin County Schedule No. R20664

The subject property consists of an 11.64-acre vacant residential lot that has gently sloping topography and is covered with native grass and trees. The lot has access provided by Eagle Pines Drive that passes through the property. Eagle Pines Road and Eagle Park Road as well as six driveways to nearby residences pass through the lot. The roads and driveways exist as access lease easements. There is a designated 1.375-acre building envelope that exists on the lot. The lot has good mountain and forest views.

Petitioners are requesting a change in classification for the subject property for tax year 2008 and 2009 from vacant land to residential. Respondent assigned vacant land classification.

Petitioner, Mrs. Betsy Fifield, testified that Petitioners purchased the property in 1994 and built their residence. The parcel was approximately 27 acres. In 2007, Petitioners subdivided the lot

into two lots. Lot One was the location for their residence and Lot Two became an adjacent lot used by the Petitioners for recreational use. Petitioners accomplished some landscaping on both parcels including a walking path that transverses both lots. Mrs. Fifield testified that pavers and native stone were placed on the pathway on Lot One but no pavers or native stone was installed on Lot Two. She testified that both lots have the appearance as one lot and that no land use change occurred when they subdivided the original lot. Mrs. Fifield testified that they have both lots listed for sale and that the lots can be sold as one unit or each lot could be sold as a separate parcel. She testified that an old mine road crosses both lots.

Petitioner's witness, Ms. Michelle Like, a representative of Neil-Garing Insurance, testified that the insurance policy issued for the subject property covers both Lot One and Lot Two.

Respondent's witness, Mr. Larry Fite, Chief Appraiser for the Pitkin County Assessor's Office and a Colorado Certified General Appraiser, testified that he inspected both lots with Ms. Cheryl Hasselbring, staff appraiser for the Pitkin County Assessor's Office and a Colorado Certified Residential Appraiser. Mr. Fite testified that he saw no physical improvements on Lot Two that would qualify that lot for residential classification. The Lot had been subdivided and could be sold separately. He testified that his opinion of the highest and best use of the lot is residential but that the actual surface use or present use classifies Lot Two as vacant land.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified as vacant land for tax years 2008 and 2009.

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 that 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."

The Board reviewed Colorado case law considered applicable for this Petition. 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 of Equalization of Denver*, 971 P.2d 675, 676 (Colo. App. 1998).

The Board concluded that Lot Two was not clearly defined as residential use based on its surface or present use as of the assessment date. While there are road improvements on Lot Two, the Board concluded that these roads were leased to and maintained by other entities rather than the current owners. The roads are not identified as "residential improvements" in Colorado statutes. The Board noted that Lot Two was listed for sale by the owners during the base period.

Petitioner provided no compelling evidence that there were any improvements, residential or otherwise, affixed to the land as of January 1, 2008 or January 1, 2009. Consequently, on the

assessment date, the site did not include a residential improvement as defined by the Colorado Revised Statutes and cannot be considered residential land.

After careful consideration of the testimony presented in the hearing, and, a review of Colorado case law and statutes, the Board concludes that Respondent's assigned classification of vacant land is reasonable and supportable.

ORDER:

The petition is denied.

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 30th day of August, 2011.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Lyle D. Hansen

Lyle D. Hansen

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

Milla Crichton

Milla Crichton

