

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DOUGLAS E. BRUCE,</p> <p>v.</p> <p>Respondent:</p> <p>TELLER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 62035</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 28, 2013, James R. Meurer and Brooke B. Leer presiding. Petitioner appeared *pro se* via a telephone. Respondent was represented by Matthew A. Niznik, Esq. Petitioner is protesting the 2013 classification of the subject property.

Subject property is described as follows:

**107 Gentian Road, Woodland Park, CO
County Schedule No. R0018610**

The subject property consists of a 1,517 square foot duplex and a workshop. The duplex was built in 1966 and has 2 kitchens, 3 bedrooms, 2 baths and an attached garage. No detail was given about the workshop. The property has not been occupied since Mr. Bruce bought it in 1991. The duplex requires improvements in order to be habitable, including repairing the windows and front porch, painting, new carpet and updating water and sewer utilities.

The 2013 actual value assigned by the Teller County Assessor is \$14,328 and is not being appealed by Petitioner. The Teller County Assessor has changed the classification of the property for tax year 2013 from residential to vacant land classifying the improvements as “minor structures.” Petitioner is appealing the change in classification from residential to vacant land.

Pursuant to Section 39-1-103(5)(a), C.R.S., a re-classification is permissible when either an actual use of the property changes or when an assessor discovers an error in classification:

(c) Except as provided in section 39-1-102 (14.4) (b), once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous.

Mr. Bruce argued that the property has had no change in use over the last year and that the property is an unoccupied duplex house. The subject requires repairs in order to meet current building codes and the utility systems require updating. He contended the improvements add value to the land. Petitioner alleged that the subject has been classified as residential during the previous years of his ownership of the subject and the residential classification is still appropriate for 2013. Petitioner stated that it was his right not to rent or occupy the improvements. According to Mr. Bruce, vacancy of the improvement does not render it a “minor structure”.

Ms. Betty Clark-Wine, Teller County Assessor, testified for Respondent. Ms. Clark-Wine inspected the property from the outside on July 16, 2013. She argued that the property was not a habitable duplex but should be considered as a “minor structure.” “Minor structures” means 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. Section 39-1-103(14)(c)(II)(A), C.R.S.

According to Respondent’s witness, for a structure to be habitable, the improvements need to be safe, decent and sanitary. Ms. Clark-Wine contended the structure was not code compliant and not safe and the utilities required significant upgrading. She testified that the costs to improve the property were prohibitive. Ms. Clark-Wine however, provided no evidence as to costs which would be required in order to improve the property.

The Board finds Petitioner’s arguments more persuasive. Neither of the prerequisite conditions for re-classification mentioned in Section 39-1-103(5)(a), C.R.S. occurred in this matter to justify the re-classification of the subject. There has not been a change in use of the subject for tax year 2013. Further, the Board does not find that the subject improvements fall into the minor structure category. The improvements require repairs in order to be habitable but no testimony has been provided to suggest they do not contribute value above the land value. The Board is in agreement with Petitioner that the classification for the subject property should be changed back to residential for tax year 2013.

ORDER:

Respondent is ordered to change the 2013 classification of the property in question from vacant land to residential.

The Teller County Assessor is directed to change their 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-nine 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 2nd day of December, 2013.

BOARD OF ASSESSMENT APPEALS

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



Milla Lishchuk


James R. Meurer
Brooke B. Leer