

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>JAYNE A. GILSON,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>SUMMIT COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 68820</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 28, 2016, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Franklin Celico, Esq. Petitioner is protesting the 2013, 2014, and 2015 classification of the subject property.

The subject property is described as follows:

**12 Harvest Moon Trail  
Lot 2, Block 6, Hamilton Creek Subdivision No. 2  
Summit County Schedule No. 4900139**

Petitioner and Respondent stipulated to admission of all exhibits including Petitioner's Exhibits 1-7 and Respondent's Exhibits A-H.

Description of the Subject Property

This appeal involves the relationship between two legal and platted residential lots located in the Hamilton Creek Subdivision in Summit County, Colorado. The subject is a vacant buildable residential lot classified as *vacant land* by Summit County, hereinafter identified as Subject Lot. This lot contains 0.596 acres, is treed, generally triangular in shape, and slopes gradually from north to south. Access to this parcel is via the cul-de-sac at the end of Crescent Moon Trail. County records indicate that this lot was acquired by Robert and Jayne Gilson in 1998. There are no residential or recreational improvements on this lot as of the assessment date.

Robert and Jayne Gilson own an additional residential lot, which is not a subject of this appeal, located at 137 Crescent Moon Trail, hereinafter identified as Residential Lot. Unlike the Subject Lot, this lot is improved with a 3,714 square foot residence and is classified as *residential property* by Summit County. The improved parcel consists of 0.52 acres and was purchased by Mr. and Mrs. Gilson in 1995. Access to the Residential Lot is via Crescent Moon Trail.

The common border between the subject and the improved Residential Lot is reported to be approximately seven feet, and is located on Harvest Moon Trail, a privately maintained road/access easement within the Hamilton Creek Subdivision.

The value of the subject is not in dispute; the parties only dispute the classification of the subject during the 2013-2015 tax years. Respondent has placed vacant land classification on the subject during the 2013-2015 tax years. Petitioner argues that the subject parcel should be re-classified as residential land during the tax years in question.

#### Applicable Law

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 ...” (Emphasis added).

The Property Tax Administrator (PTA) interprets Section 39-1-102(14.4), C.R.S. to mean that “[p]arcel(s) of land, under common ownership, that are contiguous and used as an integral part of a residence, are classified as residential property.” *See* Assessors Reference Library (the ARL), Volume 2, Section 6.10. Citing *Sullivan v. Denver County Board of Equalization*, 971 P.2d 675 (Colo.App.1998) and *Fifield v. Pitkin County Board of Commissioners*, 292 P.3d 1207 (Colo.App.2012) the PTA adds that 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.

Further, the Property Tax Administrator, *see* ARL, Vol. 2, Section 6.10-6.11 titled “Special Classification Topics; Contiguous Parcels of Land with Residential Use,” emphasizes that the assessor’s judgment is crucial in determining if contiguous parcels can be defined as residential property and that a physical inspection provides information critical to the determination whether a contiguous lot can be classified as residential. Moreover, the PTA suggests several judgment criteria to be considered when making such a determination:

- Are the contiguous parcels under common ownership?
- Are the parcels considered an integral part of the residence and actually used as a common unit with the residence?
- Would the parcel(s) in question likely be conveyed with the residence as a unit?
- Is the primary purpose of the parcel and associated structures to be for the support, enjoyment, or other non-commercial activity of the occupant of the residence?

The Property Tax Administrator's interpretation of statutes pertaining to property taxation is entitled to judicial deference as the issue comes within the administrative agency's expertise. *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 16-22 (Colo. 1996) ("Judicial deference is appropriate when the statute before the court is subject to different reasonable interpretations and the issue comes within the administrative agency's special expertise.")

The Colorado Court of Appeals has cited favorably the PTA's interpretation of the statutory definition of "residential land" per Section 39-1-102 (14.4), C.R.S. as well as the PTA's proposed "judgment criteria" that assessors must consider when determining whether contiguous parcels are residential land. *Fifield*, 292 P.3d 1207.

Moreover, the procedures contained in the ARL promulgated by the Property Tax Administrator pursuant to Section 39-2-109(1)(e), C.R.S. are binding upon county assessors. *Huddleston*, 913 P.2d 15, 16-22.

#### Evidence Presented Before the Board

Petitioner's first witness, Travis Stuard, Senior Associate with Duff & Phelps testified to the contents of Petitioner's Exhibits 1-7. Mr. Stuard stated that both parcels have independent legal access and the Subject Lot can be independently developed with a residential improvement. The improved parcel lies to the east and the subject unimproved lot is located to the west of the Harvest Moon Trail, which is a paved, privately-maintained road/access easement. The Subject Lot is located south of the improved lot except for a 7-foot boundary that lies directly across from the improved lot and over the Harvest Moon Trail. Mr. Stuard asserts that this 7-foot boundary, although encumbered by an easement, is sufficient to render the two lots contiguous because this is where the two lots touch. Mr. Stuard also testified that the improved parcel sits at approximately 30-foot elevation above the subject parcel.

Petitioner called Mr. Robert Gilson, Petitioner's husband who co-owns the two parcels of land to testify as a second witness. Mr. Gilson testified that he and his wife live in Oklahoma and use their Colorado property as a vacation home. Mr. Gilson stated that Petitioner purchased the Subject Lot in order to protect the view from the improved Residential Lot. The witness stated that he and his wife enjoy watching wild life that occasionally cross the Subject Lot. Mr. Gilson also added that he and Mrs. Gilson occasionally walked over to the subject to "have a glass of wine." Mr. Gilson also stated that the Harvest Moon Trail is a privately-maintained road that is maintained by the Homeowners' Association. The Harvest Moon Trail is open to the public and anyone can drive over it without restriction. On cross-examination, Mr. Gilson confirmed that Petitioner did not have a right to develop on the section of the Harvest Moon Trail adjacent to his lots or exclude anyone from using it. The witness stated that he did not look into either vacating property lines between the two properties or placing a non-development covenant on the subject parcel. He also added that the Residential Lot and the Subject Lot would likely be sold together.

Respondent presented the testimony of Michael Petersen, Certified General Appraiser with the Summit County Assessor's Office. Mr. Petersen testified to the contents of

Respondent's Exhibits A-H. Mr. Petersen presented a copy of the subject plat diagram from the County records. On the diagram, the Harvest Moon Trail is identified as a 30 foot private access and utility easement that lies between the subject parcel and the improved Residential Lot. Mr. Petersen testified that the lot lines between the two parcels are touching and their meeting point represents the center line of the easement (last 15-feet along the lot lines of each adjoining parcel are subject to the easement). The witness stated that the easement prevents Petitioner from private use of the land subject to the easement, and from excluding others from using it.

Next, Respondent presented the testimony of Beverly Breakstone, Summit County Assessor. Ms. Breakstone testified that she personally inspected the subject property. Ms. Breakstone stated that the Subject Lot showed no evidence of use and that she saw no crushed grass or any other indication of use. She determined that due to the sloping topography, there was no direct, easy access from the improved Residential Lot to the subject parcel so Petitioner would need to walk approximately 382 feet from the drive way of the improved Residential Lot to an open area of the Subject Lot in order to enjoy a glass of wine.

Ms. Breakstone stated that the improved parcel had excellent views from the deck of the improvement facing away from the Subject Lot. According to the witness, the views from the improved Residential Lot in the direction of the subject are not as good. Ms. Breakstone testified that due to Petitioner's residence location at approximately 30-feet elevation from the subject parcel, even if the subject was developed with an improvement, the views from Petitioner's residence would be minimally impacted.

Respondent's witness also opined that the subject's most probable future use is for residential development, and it is more likely to be sold separately as a development lot.

#### The Board's Findings

The burden of proof in BAA proceedings is on the taxpayer to establish the basis for any reclassification claims concerning the subject property. *Home Depot USA, Inc. v. Pueblo Cty. Bd. of Comm'rs*, 50 P.3d 916, 920 (Colo. App. 2002). The Board finds that Petitioner failed to meet its burden of proving that the subject meets the definition of "residential land" which is defined in Section 39-1-102(14.4), C.R.S. as meaning "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."

#### Common ownership

The parties had entered into a stipulation that there is a commonality of ownership between the subject parcel and the improved residential parcel. Pursuant to the County records, both parcels are owned by Robert and Jayne Gilson.

#### Contiguity

Both parties agree that the Subject Lot and the improved Residential Lot owned by Petitioner share a common 7.4-foot boundary where the two lots "touch." The Board finds that the presence of a 30-foot private access and utility easement that allows for a private road to proceed between the two lots does not directly affect the contiguous nature of the two lots. The

Board's finding is bolstered by the testimony of Respondent's witness that in the event that Petitioner decides to vacate the legal boundaries between the two lots, the County would grant residential classification to the subject parcel.

#### Use

The Board is not persuaded that the Subject Lot is used as a unit in conjunction with the residence on the Residential Lot. The parcel is heavily treed and covered with tall grass evidencing no sign of usage of any kind. In essence, it is a tract of pristine, undisturbed forested land. The Board is not persuaded by Petitioner's claim that the subject is used for view protection as the Subject Lot sits 30 feet below the Residential Lot and, even if developed, would not significantly impede Petitioner's view. Moreover, the Board was persuaded by Respondent's testimony that the primary view from the improved Residential Lot is in the opposite direction from the subject. In addition, the location of the Subject Lot is off to the side of the improved Residential Lot, not directly in front or behind, further putting into question Petitioner's claim of a view impediment from the potential development of the subject.

The Board was also not persuaded that the observation of wildlife occasionally passing through the Subject Lot is a "use in conjunction" with Residential Lot, especially taking into consideration that the wild life is abundant in Summit County. Petitioner did not convince the Board that Petitioner's ability to observe wild life would be negatively impacted should the Subject Lot be developed or should the Subject Lot not exist all together.

The Board finds that Respondent correctly applied Section 39-1-102(14.4) and the procedures contained in the ARL, which are binding upon county assessors, *see Huddleston v. Grand County Board of Equalization*, 913 P.2d 15 (Colo. 1996), in determining that the subject parcel does not meet the definition of residential property. The Board also finds that under the facts presented, the Subject Lot is not used as an integral part of the residence located on the Residential Lot.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2013, 2014 and 2015.

#### **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-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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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).

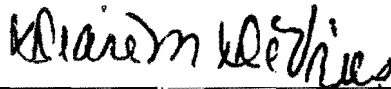
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 25<sup>th</sup> day of January, 2017.

**BOARD OF ASSESSMENT APPEALS**



Diane M. DeVries



James R. Meurer

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



Milla Lishchuk

