BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 68965
Petitioner: **PAUL ANTHONY AND DONNA DEAN LANNIE,** v. Respondent: **EAGLE COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 21, 2017, Sondra Mercier and MaryKay Kelley presiding. Petitioners were represented by Bruce Cartwright, Agent. Respondent was represented by Christina Hooper, Esq. Petitioners are protesting classification of the subject property for tax year 2016.

The Board agreed to consolidation of Dockets 68965 (tax year 2016) and 65093 (tax years 2014 and 2015) for purposes of the hearing.

Description of the Subject Property

2179 St. Moritz Way, Vail, Colorado
Eagle County Schedule No. R060832

This appeal involves the relationship between two legal and platted residential lots in the Vail Heights Subdivision. The subject is a vacant, buildable 0.540-acre residential lot with gently to steeply sloping terrain. It is classified as *vacant land* by Eagle County. The second parcel (not a subject of this appeal) consists of the adjacent residential property at 2187 St. Moritz Way classified as *residential*.

Respondent assigned vacant land classification for the vacant subject site located at 2179 St. Moritz Way. Petitioners are requesting residential classification.

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]arcels 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

The parties have stipulated to common ownership and the contiguous nature of the two parcels. The only dispute is whether the subject lot is used as a unit in conjunction with the residential improvements on the adjoining improved residential parcel. Valuation is not disputed.

Mr. Lannie described the two properties. The residential site is gently sloped at the front and rises steeply to the rear where it is not walkable. The home sits at the front of the site with a southwest orientation and shares a common driveway with the home to the west. The adjoining vacant parcel, which is the subject of this appeal, is similarly sloped, gentle at the front and steep toward the rear. Both sites back to national forest.

Mr. Lannie testified that the primary reason for purchase of the vacant subject parcel in 2010 was protection of his home's view of the Gore Range to the east. While the front view to the south encompasses commercial buildings and an apartment complex, large living room windows and a wraparound deck look eastward toward the Gore Range. He described this view as highly desirable with a premium for marketability and value.

Mr. Lannie described little level ground around the front of the site. He testified that another reason for purchase of the subject parcel was to provide additional level ground on which to walk, enjoy wildlife, and eventually landscape. He identified a cluster of irrigated aspen trees planted by the builder, one of which he thinks sits on the vacant site.

Respondent's witness, Andrea Noakes, Certified Residential Appraiser for the Eagle County Assessor's Office, testified that she saw no significant evidence that the subject lot was used in conjunction with the residence on the adjoining lot.

Ms. Noakes did not consider Petitioners' activities (walking and wildlife viewing) to meet the statutory requirement of "use in conjunction" with the improved parcel. During four inspections preparing for this appeal, she observed no evidence of activity or walking, children playing, trampled grasses, or walking paths. As opposed to the improved residential parcel, the subject parcel had no evidence of landscaping; the parcel appeared to have been left in its natural state.

Ms. Noakes considered the subject's optimal building envelope to be at the front of the site with a gentler grade and frontage on St. Moritz. She considered a building location at the front of the site to be superior to the rear, which narrows and has a steeper 40-plus grade. It is her opinion that construction of a residence toward the rear would be less conducive to access and considerably more expensive.

Ms. Noakes described Petitioners' view of the Gore Range as desirable and marketable. She noted it likely that future construction on St. Moritz Way would be at the front of each lot due to steep terrain at the rear. She noted that Petitioners' home and other homes on this street were built at the fronts of their lots. Further, she argued that views from Petitioners' home will not be significantly obstructed by homes built at the front of their respective sites.

Ms. Noakes discussed Mr. Lannie's reference to a cluster of aspen trees near the lot line of the two sites. While she did not observe irrigation, she noted City regulations requiring some degree of landscaping and suspected that the one tree mentioned by him likely sat on the residential site. Even if it were acknowledged to have been planted on the vacant site, she did not consider one tree to rise to the level of "use in conjunction" as required by statute.

Ms. Noakes noted that Petitioners have not vacated the lot line between the two properties. She considered this further evidence that the subject lot remains available for resale. In Ms. Noakes' opinion, the subject is likely to be sold separately from the residence.

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 Petitioners failed to meet their 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 "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 Board is not convinced that the subject lot is used as a unit in conjunction with the improvements on the residential lot. In making this finding, the Board is not convinced by Petitioners' claimed uses of the subject lot (walking and wildlife viewing). Instead, the Board is persuaded by Respondent's witness, Ms. Noakes, who conducted multiple site visits to view the subject lot and saw no evidence of use of the subject lot in conjunction with the residential improvements located on the residential lot.

The Board is not convinced that any of the irrigated aspen trees sit on the subject lot. Aspen trees are prolific in mountain locations, grow in colonies from a single seedling, and may or may not have been planted on the subject site. If one tree had incidentally been planted by the builder on the subject site, the Board does not find this activity to meet the standard of "use in conjunction." Further, the Board is convinced that no landscaping existed on the subject lot as of January 1, 2016.

The Board is convinced by testimony, parcel maps, and photographs that residential construction immediately east of Petitioners' house would obstruct the view to the east. However, the Board finds it unlikely that this location would be selected for residential construction due to steep terrain, its narrow building footprint, and the necessity for a long, narrow driveway. The Board is convinced that residential construction would likely be at the front of the subject lot. Therefore, the Board is convinced that development on the subject lot would not significantly impact Petitioners' view of the Gore Range. The Board finds that, under the facts presented, the subject lot is not used as a unit in conjunction with the residential improvements on the residential lot.

Additionally, the Board finds Respondent's testimony as to evidence of use, or the lack thereof, persuasive, and the Board does not find Petitioners' testimony as to use persuasive. No convincing evidence of use which reasonably connects the subject lot to the improvements on the

residential lot was provided by Petitioners.

The Board finds that Respondent correctly applied Section 39-1-102(14.5) 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 lot does not meet the definition of residential property.

After carefully weighing all of the evidence and considering the credibility of the witnesses, the Board is convinced that no portion of the subject lot was used by Petitioners as a unit in conjunction with the residential improvements located on the residential lot for tax year 2016. Accordingly, the Board does not believe that any portion of the subject lot is entitled to residential classification for tax year 2016. See *Farny v. Bd. of Equalization*, 985 P.2d 106, 110 (Colo. App. 1999) and *Fifield*, 292 P.3d at 1210 (determination of acreage entitled to residential classification is question of fact for BAA).

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2016.

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 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-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 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 14th day of September, 2017.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

MaryKay Kelley

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

Milla Lishchuk