BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69917
Petitioner: **FRANK HOLE AND BONNIE E. HOLE, TRUSTEES FOR THE FRANK HOLE REVOCABLE TRUST,** v. Respondent: **PARK COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 14, 2017, Diane M. DeVries and Louesa Maricle presiding. Petitioners were represented by Mr. Travis Stuard and Mr. Bruce Cartwright, Agents. Respondent was represented by Christiana McCormick, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax years 2014 and 2015.

To avoid duplicative testimony, the Board agreed to consolidate two dockets pertaining to four different properties for purposes of the hearing only. The Board will decide each case solely on its own merits without regard to discussion pertaining to the other properties, with separate decisions issued for each case. The dockets addressed in the hearing include: Docket No. 69917 Frank Hole and Bonnie E. Hole, Trustees for the Frank Hole Revocable Trust v. Park County Board of Commissioners; and Docket No. 69920 Stephen J. Ziegler Revocable Trust DTD 7/17/08 v. Park County Board of Commissioners.

The parties agreed to the admission of Petitioners' Exhibits 1 through 7 and Respondent's Exhibits A through K.

Subject property is described as follows:

Tract 138, Pike Trails Ranches, Inc., Filing No. 3, County of Park, State of Colorado
Park County Schedule No. 13043

This appeal involves the relationship between two legal and platted residential lots in the Pike Trails Ranches, Inc., subdivision in Park County, Colorado. The subject lot is a vacant buildable residential lot classified as vacant land by Park County, hereinafter identified as Subject Lot. This lot contains 45 acres, some hilly topography, and has some areas that are heavily treed. The lot has an irregular shape and access to the parcel is from Fawn Drive. The Subject Lot is adjacent to a residential lot owned by Petitioners on one side and both lots are adjacent to Bureau of Land Management (BLM) natural open space land to the west and south, respectively. There were no residential or recreational improvements on the Subject Lot as of the assessment date.

Petitioners own an additional residential lot, which is not a subject of this appeal, identified as Tract 140, Pike Trails Ranches, Inc., Filing No. 3, hereafter identified as Residential Lot. This improved parcel is 20 acres in size and access to the Residential Lot is also from Fawn Drive. The two lots share a common border. The Residential Lot is improved with a single family detached home built in 2003, and is classified as *residential* by Park County. The residence is oriented to take advantage of views to the east, south and southwest. There is a large ridge to the west and southwest, and the lots slope down significantly from the north toward the BLM land to the south and southwest.

Petitioners claim the Subject Lot is integral to the residence and that the recreational uses on the lot and passive enjoyment could all meet the use in conjunction test for residential classification. Respondent disagrees, stating the uses claimed by Petitioners are incidental uses that are not qualifying uses for residential classification under the Statute or the Assessors' Reference Library (ARL), which is binding on the Assessor. Respondent placed vacant land classification on the Subject Lot for tax years 2014 and 2015. Petitioners dispute the classification, arguing the Subject Lot should be re-classified as residential land for those tax years.

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 concurred the appeal pertains only to land classification; the Subject Lot and improved Residential Lot are contiguous; and there was common ownership for tax years 2014 and 2015. The valuation of the Subject Lot is not disputed.

Petitioners' witness, Mr. Curt Settle, Deputy Director of the Colorado Division of Property Taxation, provided testimony regarding the ARL policies, practices, and procedures. He did not provide testimony specific to the Subject Lot. Mr. Settle stated that Assessors must follow the ARL, but it is not law. The witness cited the ARL, which states the assessor's judgment is crucial in determining whether a vacant site meets the qualifying tests necessary for residential classification. He cited court rulings regarding the use of the ARL. The witness cited the *Fifield* case, which made clear that residential structures are not required on the otherwise vacant parcel to qualify for residential classification. Mr. Settle was asked to discuss the meaning of some specific language in the ARL and/or Colorado Statute, including, but not limited to "purpose", "integral", "use", "enjoyment" and "contiguity". Mr. Settle stated the broad range of variables that apply when determining classification of contiguous parcels are factors to be considered, but do not on their own meet the overall test for qualification. For example, "enjoyment" of a property does not on its own

meet the overall test for classification. The ARL does not address passive vs. active uses. The witness also discussed the process and levels of review necessary to make changes to the ARL.

Petitioners' second witness, Mr. Frank Hole, Petitioner, testified the Subject Lot and Residential Lot were purchased at the same time by him in 1971. His interest in purchasing both lots was to keep a natural preserve and because they were next to BLM land. The site for the residence built in 2003 was not selected until years after the purchase. Most of the Subject Lot is at a lower elevation and the Residential Lot overlooks it. Over the years, he has taken some tree poles from the Subject Lot for use to support the front porch of the residence and for uses inside the house. The residence is used for family vacations and, since retirement, Petitioners use it for longer periods. The well and septic system that support the residence are on the Residential Lot. The witness testified his family has historically used the Residential and Subject Lots for hiking, camping, wildlife viewing, and to look at wildflowers. The Subject Lot has an enhanced deer trail dirt road and natural deer trail. Petitioners perform fire mitigation and erosion control work on the lots. The witness testified there has been no commercial use of the lots. There is no visible demarcation between the Subject and Residential Lots, 100% of the Subject Lot is used for the activities described and it is necessary to the enjoyment of the Residential Lot.

Petitioner provided additional testimony by Mr. Curt Settle. Petitioner's agent asked if the term "integral" is synonymous with "necessary and essential". Mr. Settle testified that "integral" is not used in the statute; it is used in the ARL relative to "use in conjunction". When asked his interpretation of the term "integral", the witness testified there has to be a connection, it does not have to be "essential" and the assessor's judgment is crucial in determining this. The witness stated the term "integral" was used in the ARL following all the necessary review processes required for changes to the ARL. In response to contiguity questions about whether vacant parcels would have to physically touch a Residential Lot, or could they be considered contiguous through another parcel that does touch, the witness testified that if other requirements of the classification statute are met, then connection through an interim parcel would qualify the farthest parcel that might not itself touch the Residential Lot.

Respondent's witness, Mr. David B. Wissel, Park County Assessor, provided testimony regarding the property classification process used by the assessor's office, practices, and procedures. Mr. Wissel described events that indicate a change in land classification might be considered: a deed transfer of the property, a land use application, issuance of a building permit, a request from the taxpayer, or the property assessment appeal process. A taxpayer with a vacant lot adjacent to a residential lot can go through the county process to consolidate the lots into a single parcel, which would have a residential classification. The Assessor's office provides a significant amount of outreach information on-line and at in-person information events. The witness testified judgment, property inspection, uniform treatment among properties, and highest and best use are all important considerations in determining classification. The witness testified his understanding of the term "integral" relative to vacant lots adjacent to a residential property is that the vacant land is essential or necessary for the residential unit to perform. In Mr. Wissel's judgment, incidental uses of land, such as walking across, cutting wood, and viewing wildlife on the site are not essential or necessary uses, so are not equal to integral uses. Reclassification occurs only when there is a change in use.

Respondent presented a second witness, Ms. Wendy Hoffman, a Licensed Appraiser employed by the Park County Assessor's office. Ms. Hoffman testified she met with Petitioners and inspected the Subject Lot and the Residential Lot on September 26, 2017. The witness testified that access to the Subject Lot is from Fawn Drive along the north side of the parcel and the most likely building envelope on the Subject Lot is in the north part of the parcel, east of the existing residence on the Residential Lot. The Ridge to the southwest of the Subject Lot slopes up toward the BLM land. The primary views from the Subject Lot and Residential Lot are to the south and to the southeast to the mountains. The elevation of the Subject Lot is lower than the Residential Lot. If a residence were constructed on the north part of the Subject Lot, the view from the existing residence on the Residential Lot would not be significantly impaired. The difference in elevation would reduce the portion of the house on the Subject Lot that would be visible from the house on the Residential Lot. The witness testified Petitioners would be able to conduct all the outdoor activities described by Mr. Hole on the Residential Lot. All the residential lots in this vicinity have been developed except the Subject Lot. There is no use restriction affecting the Subject Lot and it is reasonable to expect it too could be developed with a residence. The witness testified there is market demand for lots similar to the Subject Lot and in her opinion, the Subject Lot would be sold separately rather than together with the Residential Lot. The witness did not see anything on the Subject Lot that is necessary or essential to 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).

Common ownership

The parties agreed there is a commonality of ownership between the Subject Lot and the Residential Lot for tax years 2014 and 2015. Pursuant to the County records, the two parcels are owned by Frank Hole and Bonnie E. Hole, Trustees for the Frank Hole Revocable Trust.

Contiguity

The contiguity of the Subject Lot and the Residential Lot is not in dispute. The Subject Lot shares a common boundary with the Residential Lot.

Use

Board was not persuaded that the Subject Lots were used as a unit in conjunction with the residential improvements situated on the Residential Lot. In making this finding, the Board considers the plain language of the statute, which states, "...**used as a unit** in conjunction with the **residential**

improvements located thereon ..." (Emphasis added).

The Board was not persuaded that the Subject Lot was used as a unit in conjunction with the residential improvements located on the Residential Lot. In making this finding, the Board was not convinced by Petitioners' claim that the Subject Lot is essential to the enjoyment of the Residential Lot. Instead, the Board was persuaded by Respondent's witness, Wendy Hoffman, who inspected the Subject Lot and testified that uses claimed by Petitioners that might have occurred on the Subject Lot could be conducted on the Residential Lot. The Board is also persuaded that the activities described by Petitioners are not uses in conjunction with the residential improvements. The Board is not convinced by Mr. Hole's testimony that taking some tree poles from the Subject Lot for use at the residence rises to the level of use in conjunction for the support of the improvements. The Residential Lot also has treed areas. Further, the Board is not convinced by Petitioners' claim that 100% of the 45-acre Subject Lot is used as a unit in conjunction with the residential improvements.

Ms. Hoffman's testimony concerning the directions of the primary views from the residence was also credible. Although Petitioners claim there would be some loss in views, the Board is convinced by the evidence, including photographs, the Residential Lot would still retain the superior views across the lot even if a residence were constructed on the Subject Lot. Based on the evidence presented, the Board does not believe the Subject Lot and the Residential Lot were used as a unit in conjunction with the residence for the enjoyment of views.

After carefully weighing all the evidence and considering the credibility of the witnesses, the Board is convinced that the portion of the Subject Lot used by Petitioners in connection with the residential improvements was, at most, de minimis. Accordingly, the Board does not believe any portions of the Subject Lot is entitled to residential classification for tax years 2014 and 2015. 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)

The Board finds that Respondent correctly applied Section 39-1-102(14.4) and the procedures contained in the ARL, which are binding upon the 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 land. Petitioners presented insufficient probative evidence and testimony to prove that the Subject Lot was incorrectly classified for tax years 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 19th day of December 2017.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Louesa Maricle

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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