BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69918
Petitioner: **TONI L. ROBISON REVOCABLE TRUST,** v. Respondent: **PARK COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 15, 2017, Sondra Mercier and MaryKay Kelley presiding. Petitioner was represented by Travis Stuard, Agent. Respondent was represented by Marcus McAskin, Esq. Petitioner is protesting the 2014 and 2015 classification of the subject property.

The Board consolidated Dockets 69918 and 69919 (Roxana Dale Kerns Revocable Trust) for purposes of the hearing.

Description of the Subject Property

Lot 69, Filing 2, Black Mountain (Lynch Creek Court), Fairplay, Colorado
Park County Schedule No. 40058

This appeal involves the relationship between two legal and platted residential lots. The subject is a vacant, buildable 35-acre residential lot. It is classified as *vacant land* by Park County. The second parcel (not a subject of this appeal) consists of a 35-acre improved property, adjacent to the subject, defined as Lot 68, and classified as *residential.*

Lots 69 (subject site) and 68 (residential site) are irregularly shaped and contiguous. They are located in Black Mountain, a residential subdivision near Fairplay with 101 sites, each 35 acres more or less. Lynch Creek Court provides access from Park County Road 22. Terrain is gentle to steeply sloped and heavily forested. Both parcels back to Pike National Forest.

Respondent assigned vacant land classification for the vacant subject site defined as Lot 69. Petitioner is 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 dispute is whether the subject lot is used in conjunction with the residential improvements on the adjacent residential parcel. Valuation is not disputed.

Mr. Robison, manager of his wife's (Toni L. Robison) trust, testified that the residential parcel, Lot 68, was purchased in 2000 and the house built two years later. The subject site was purchased in 2005 in order to preserve the view for the residence and to ensure privacy. Mr. Robison, referencing Exhibit 2, Page 5, testified that views from the front porch to the east and southeast include Pike's Peak. In his opinion, construction on the subject site would obstruct this view. Exhibit 2, Page 4 shows views to the east. Mr. Robison described hiking across the two parcels, camping (rock firepit), picnicking, and riding horses and ATVs. Both parcels abut national forest land of an estimated one million acres. Mr. Robison considered the two parcels to be a single unit; he would sell them together. He and his wife plan to pass the two parcels to their children. On questioning, Mr. Robison testified that he learned recently about the difference in classifications and the possibility of vacating the shared lot line; he might consider it if the appeal is denied.

Respondent's witness, Abby Carrington, Certified Residential Appraiser for the Park County Assessor's Office, inspected both lots in September of 2017. She saw no evidence of hiking or ATV trails on the subject parcel and noted considerable downed timber that would impede walking.

Ms. Carrington described access to the residence as a one-quarter-mile steep road from Lynch Creek Court. She described views to the west as panoramic, encompassing the Mosquito Range and Continental Divide. Views to the east were obstructed by thick timber; Pike's Peak was not prominent, and, in her opinion, any potential new construction on the subject would not be visible from the residence. She identified two alternative building sites that offered excellent views and are located approximately fifteen miles from the residence and would not impact views.

Ms. Carrington stated that Petitioner enjoyed excellent views and recreational uses on the residential parcel. Defining "integral" as predominant or central, she did not see the vacant parcel as integral to enjoyment. She defined the family's activities on the subject site as occasional or incidental and not at the level of use as a unit in conjunction with the residential improvements on the adjacent residential parcel.

Respondent's witness, Dave D. Wissel, Park County Assessor, referenced the statutory definition of "residential land" for the vacant parcel, interpreting it to require "integral" use with the residential parcel. He stated that walking and riding ATVs did not meet the standard of use in conjunction with the residential improvements, nor did the owners' enjoyment of mountain views or the privacy provided by the surrounding forest.

Curt Settle, Director, Division of Property Taxation, testified to several issues relevant to

classification. First, an owner's intent to sell at a future date is irrelevant to classification; use beyond January 1 of the tax year in question cannot be considered; the intent to sell would need to be viewed in conjunction with use of the property on the assessment date. Second, per *Fifield*, residential classification does not require the existence of a structure. Third, an abatement petition for classification is a legitimate way to seek abatement of taxes.

Mr. Settle discussed the definition of "integral," suggesting uses such as wells, solar panels, and landscaping (for support of the residence). He also testified that "enjoyment" is one of the factors considered for determination of classification. Examples of "enjoyment" can be such as walking, buffering for peace and quiet, and cutting firewood for personal use. The more examples of passive use that are cited, the greater the likelihood of "use in conjunction" requirement is met. Mr. Settle, referencing the ARL, Vol. 2, Section 6.10-6, emphasized that the assessor's judgment is crucial in determining classification.

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 has not met this burden of proof and that the subject does not meet 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 persuaded by testimony and photographs that the residence was built with a western orientation towards the Mosquito Range and Continental Divide and that heavy timber is predominant to the east, obstructing all but an obscured view of Pike's Peak. The Board finds that Petitioner's intent was to take advantage of the view premium to the west, recognizing that a forested view to the east was secondary.

The Board is also persuaded by testimony and photographs that residential construction to the east of Petitioner's house would not obstruct views due to heavy timber. Also, the Board finds it likely that other building sites are favorable for construction. Respondent's witness testified that at least two building sites are available on the vacant parcel, neither of which would obstruct views from the residence.

The Board considers the residential site's 35 acres sufficient for privacy, walking/hiking, ATV and horseback riding, and camping. The Board considers Petitioner's recreational use on the subject parcel to be incidental, not integral, to the residential site.

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 Petitioner 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(14.5) 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.

The Board finds that Petitioner failed to meet the burden of proof regarding reclassification of the subject parcel 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

Sondra 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