BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 69920
Petitioner: **STEPHEN J. ZIEGLER REVOCABLE TRUST DTD 07/17/08,** 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. Petitioner was represented by Mr. Travis Stuard and Mr. Bruce Cartwright, Agents. Respondent was represented by Christiana McCormick, Esq. Petitioner is requesting an abatement/refund of tax on the subject property for tax year 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. 69920 Stephen J. Ziegler Revocable Trust dtd 07/17/08 v. Park County Board of Commissioners, and Docket No. 69917 Frank Hole and Bonnie E. Hole, Trustees for the Frank Hole Revocable Trust v. Park County Board of Commissioners.

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

Subject properties are described as follows:

Lots 1 and 2, Unit #4, Aspen Meadows, County of Park, State of Colorado
Park County Schedule No. 43429 (hereinafter identified as Parcel 1)

Lot 3, Unit #1, Aspen Meadows, County of Park, State of Colorado
Park County Schedule No. 43421 (hereinafter identified as Parcel 2)

Unplatted Property, Located in E1/2 of Section 22, Township 15 South, Range 73 West of the 6th P.M., County of Park, State of Colorado
Park County Schedule No. 43332 (hereinafter identified as Parcel 3)

This appeal involves the relationship between three legal and platted residential lots in the Aspen Meadows subdivision, and one unplatted property, all in Park County, Colorado. Two of the subject lots are large acreage platted vacant buildable residential lots; the third subject lot is an unplatted large acreage vacant parcel that also qualifies as a buildable residential home site. The three Subject Lots are classified as *vacant land* by Park County. These three lots are hereinafter identified as Subject Lots. The Subject Lots are further identified in exhibits and testimony as Parcel 1, Parcel 2, and Parcel 3. The Subject Lots have a combined land area of 421.20 acres, a wide range of topography ranging from valleys to steep, rough terrain and have areas that are heavily treed. The lots have irregular shapes and access to the Subject Lots is from Aspen Meadows Drive. The combined property is adjacent to large areas of Bureau of Land Management (BLM) natural open space land to the southwest, south, and southeast.

Petitioner owns an additional residential property, which is not a subject of this appeal, identified as Lots 3, 5, and 6, Unit #4, Aspen Meadows, County of Park, State of Colorado, hereafter identified as Residential Lot. That parcel is 391.56 acres in size and has an access road across the property from State Highway 9. The Residential Lot is improved with a 3,802 square foot single family detached home, built in 1999, and is classified as *residential* by Park County. The Residential Lot shares two common borders with Parcel 1. Parcels 2 and 3 share borders with Parcel 1, but are not contiguous to the Residential Lot at any point.

Petitioner claims the Subject Lots are integral to the residence and that the recreational uses on the lots and passive enjoyment could all meet the use in conjunction test for residential classification. Respondent disagrees, stating the uses claimed by Petitioner are incidental uses, 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 Lots for tax year 2015. Petitioner disputes the classification, arguing the Subject Lots should be re-classified as residential land for that tax year.

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 contiguity and land classification; the Subject Lots and improved Residential Lot were under common ownership for tax year 2015. The valuations of the Subject Lots are not disputed.

Petitioner's 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 Lots. 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 Statue, 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. Stephen J. Ziegler, the taxpayer, testified Subject Parcels 1 and 2, and the Residential Lot were purchased together from one seller in 2007. He purchased Parcel 3 separately in 2008. His interest in purchasing the properties was to have a "mountain ranch" for recreation opportunities. The witness testified he would not have purchased any part of the Residential Lot and Subject Parcels 1 and 2 if he had not been able to buy all of them. The property is not rented and was not used for commercial purposes in 2015. The original acquisition had agricultural land classification when it was purchased because there was a grazing contract in place. Petitioner later opted not to renew the contract after which the property was reclassified to vacant land.

Petitioner testified the property is used about four to six weeks a year by Petitioner's family, friends, employees and customers of his company. In addition to the house improvements, the Residential Lot has equipment storage buildings, a gun range, a tee-pee camp, and large pond. Most improvements are on the Residential Lot. An old, unused shed/barn structure is situated on Parcel 2. Petitioner owns one horse that resides on the Residential Lot. The ranch manager owns and grazes approximately 8 to 12 horses on the property in exchange for providing trail rides for guests. There is a verbal agreement between Petitioner and the ranch manager for that exchange. The horses tend to stay near the pond on the Residential Lot, but could also use the Subject Lots. The combined Subject Lots and Residential Lot form the ranch and, where possible, the perimeter is fenced to keep horses from getting out. Outdoor activities on the ranch include horseback riding, the gun range, hiking, riding all-terrain vehicles (ATVs), and camping. There are ATV and horse trails on the property. Small camp buildings are being built on Parcel 3, including three small bunk houses, a cook shack, and a supply house. The witness testified construction started in 2015, and initially stated the improvements might have been about 20% completed on the assessment date of January 1, 2015, but he testified it was hard to say. On cross examination by Respondent, the witness testified there were no building permits pulled for the new camp improvements on Parcel 3. The witness testified he received a letter from the Division of Fish and Wildlife that he could no longer hunt on the property because Park County considers the ranch to be residential property. The witness stated there is no visible demarcation between the Subject and Residential Lots, 100% of the Subject Lots are used for the activities described, and the Subject Lots and Residential Lot are treated as a single property. If the property were to be sold, he would sell it as a single unit.

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 witness, Ms. Abby Carrington, a Certified Residential Appraiser employed by the Park County Assessor's office. Ms. Carrington testified she and Wendy A. Hoffman of the assessor's office toured the ranch property on September 26, 2017. The witness testified she observed the new camp buildings on Parcel 3, but did not have access to the interiors. She testified the taxpayer did not pull building permits for those structures, which are required by Park County. The witness sent a letter and classification notices to Petitioner after the grazing contract was not renewed, but received no response. Regarding Petitioner's claim he is no longer allowed to hunt on the property, Ms. Carrington disputed that claim, testifying that the Division of Fish and Wildlife sets aside 10% of the hunting tags for agriculture property. When Petitioner gave up the grazing contract, he lost the preferential treatment relative to tags reserved for agriculture properties, but can still hunt and fish on his land.

Respondent presented Ms. Wendy A. Hoffman as witness. Ms. Hoffman is a Licensed Appraiser employed by the Park County Assessor's office. The witness testified she toured the ranch with her colleague, Ms. Carrington in September 2017. The witness provided testimony that the Residential Lot is composed of three separate legal lots that were combined by the county into one schedule number for classification because the access road crosses two of the lots to reach the residence. Because of the access, the assessor's office considers the two vacant lots necessary to the residential improvements and all three lots were given residential classification. The witness stated the best views from the residence follow the entrance drive from the house to the mountains to the northeast, away from the Subject Lots. The witness stated Parcel 2 is not visible from the residence.

The witness observed the new camp buildings on Parcel 3 and testified it appeared they had not been completed and did not yet have a water connection. The witness testified she thought construction may have begun after January 1, 2015. Ms. Hoffman testified she did see some perimeter fencing, but didn't see 100% of the property. She did not see fencing along Aspen Meadows Road, which generally forms a boundary line between Parcels 1 and 3, and the north boundary for Parcel 2. In her opinion, the presence of some fencing did not qualify the property for residential classification. Further, Parcels 2 and 3 do not share common boundaries with the Residential Lot, so do not meet the contiguity requirement for residential classification. The witness confirmed she disagrees with Mr. Settle's testimony regarding an interim parcel that touches a Residential Lot can create contiguity with non-touching lots. The witness stated she believes there are recreational activities on the Residential Lot, but did not observe any evidence of activities on the Subject Lots. The camp buildings on Parcel 3 are new and not yet completed. The witness testified she did not observe and was not aware of any uses on the Subject Lots by anyone other than the taxpayer and his guests. Ms. Hoffman testified the Subject Lots all have buildable home sites and she had no evidence there were uses in conjunction with the Residential Lot. The witness testified her interpretation of the statutory term "integral" means "necessary".

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 "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 Lots and the Residential Lot for tax year 2015. Pursuant to the County records, the four parcels are owned by the Stephen J. Ziegler Revocable Trust Dated July 17, 2008.

Contiguity

The contiguity of the Subject Parcel 1 and the Residential Lot, which share a common boundary, is not in dispute. However, the contiguity of Subject Parcels 2 and 3 is disputed because neither one shares a common boundary with the Residential Lot. Parcels 2 and 3 are both contiguous to Parcel 1. The Board finds Mr. Settle's testimony credible that an interim vacant parcel that is physically contiguous to both a Residential Lot and a non-touching vacant parcel could create contiguity for the non-touching parcel, assuming all the other tests of residential classification are met. Therefore, the Board disagrees with Respondent's conclusion that all vacant parcels must be physically contiguous to the Residential Lot.

Use

The 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 convinced by Petitioner's claim that the Subject Lots are essential to the enjoyment of the residential improvements. The Board finds that the tee-pee camp improvements and the gun range are on the Residential Lot; the Board is not persuaded the new camp buildings on Parcel 3 were substantially under construction on January 1, 2015. The Board is convinced the old shed/barn structure on Parcel 2 is abandoned and unused. Based on Petitioner's testimony, the Board finds it credible that the one horse he owns, and the ranch manager's horses are typically found on the Residential Lot. The pond is there; the Residential Lot is almost 391.56 acres in size; and with a combined acreage of 812.76 acres, the Board does not find it credible that the 8 to 12 horses that might be on the property at any given point roam the entire property, or that the additional acreage provided by the Subject Lots is required to support this small number of animals that are used for recreation.

Instead, the Board was persuaded by Respondent's witness, Ms. Hoffman, who inspected the Subject Lots and testified that uses claimed by Petitioner that might have occurred on the Subject Lots could be conducted on the Residential Lot. The Board is persuaded by Ms. Carrington's testimony that the Division of Fish and Wildlife has not denied Petitioner the ability to hunt and fish on his land; rather he simply lost the preferential treatment afforded agriculture property relative to the issuance of tags.

The Board finds Ms. Hoffman's testimony concerning the directions of the primary views from the residence credible. Based on the evidence presented, including the variable topography that limits views, the Board does not believe the Subject Lots were used as a unit in conjunction with the residential improvements for the enjoyment and preservation of views. The Board is also persuaded that the activities described by Petitioner are not uses in conjunction with the residential improvements.

After carefully weighing all the evidence and considering the credibility of the witnesses, the Board is convinced that the portion of the Subject Lots used by Petitioners in connection with the residential improvements was, at most, de minimis. Accordingly, the Board does not believe any portion of the Subject Lots is entitled to residential classification for tax year 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 Lots do not meet the definition of residential land. Petitioner presented insufficient probative evidence and testimony to prove that the Subject Lots were incorrectly classified for tax year 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

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