

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SANDRA K. MORRISON TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 70093</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 21, 2017, Dianne M. DeVries and Gregg Near presiding. Petitioner was represented by Travis Stuard, Agent. Respondent was represented by Christina Hooper, Esq. Petitioner is protesting the 2014-2015 classification of the subject property.

The parties stipulated Petitioner's Exhibits 1-6 and Respondent's Exhibits A-I.

Description of the Subject Property

**004644 North Point
Lot 50, Block 3, Wildridge Subdivision
Avon, Colorado
Eagle County Parcel Number 1943-352-02-003**

This appeal involves the relationship between two legal and platted residential lots located in the Wildridge Subdivision within Eagle County, Colorado in the Town of Avon. The subject is a vacant buildable residential lot classified as vacant land by Eagle County, hereinafter identified as Subject Lot. The Subject Lot contains 0.92 acre vegetated with native grasses, sagebrush and some aspen trees. The site is generally rectangular in shape, sloping downward to the south. Topography is steep hillside. County records indicate that the Subject Lot is owned by the Sandra K. Morrison Trust, Sandra K. Morrison Trustee. There were no residential or recreational improvements on the Subject Lot as of the assessment date.

The Sandra K. Morrison Trust owns an additional residential lot, which is not a subject of this appeal, located at 004700 Wildridge Road E, #A, hereinafter identified as the Residential Lot. Unlike the Subject Lot, the Residential Lot is improved with a two story condominium containing a 4,320.70- square foot residence with a garage. Classification for the improved lot is residential property by Eagle County. The Residential Lot contains 0.26 acres.

The Subject Lot and the Residential Lot are located adjacent to one another, sharing a ~~northern~~ boundary.

The value of the Subject Lot is not in dispute; the parties dispute the classification of the Subject Lot during the 2014 -2015 tax years. Respondent has placed vacant land classification on the Subject Lot during the 2014-2015 tax years. Petitioner argues that the Subject Lot should be reclassified 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 (PTA), 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 (Colc-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 presented Mr. Alec T. Morrison as a witness. Mr. Morrison testified to purchase of the Residential Lot in 1998 and in March 1999 the purchase of the Subject Lot. Mr. Morrison indicated the Morrison family visits the subject four to five times a year.

During the years in question, the Subject Lot was used for hiking, to pick flowers and enjoy the wildlife. Topography of the Subject Lot was described as steep, providing a good work out to walk up the parcel. The witness testified to purchase of the Subject Lot in 1999 to prevent development which would completely block his view up the hill toward land owned by the BLM.

The witness also stated the Subject Lot would not have been purchased had Petitioner not previously purchased the Residential Lot. Exhibits 1-3 were presented to provide visual aid to the Board of the relevant plats of both lots, the Assessor's Property Record cards and the deeds transferring both properties to Petitioner. Reference was made to Respondent's Exhibit E, pages 20 to 25, as illustrations of the location of the Subject Lot in relation to the Residential Lot as well as the topography and views from several locations on the Subject Lot. The witness stated the Subject Lot is considered Petitioner's back yard and it is used in that manner.

On cross examination, Ms. Hooper clarified the location of the Subject Lot in relation to the Residential Lot and other homes nearby. When asked, Petitioner stated he could see the residence constructed north of the Subject Lot from the Residential Lot. Upon further cross examination Petitioner affirmed there were no man made improvements on the Subject Lot. Ms. Hooper questioned whether Petitioner considered vacating the lot line to which Petitioner responded there was no desire to take that action.

Respondent presented Ms. Joanie Baranowski, a Licensed Appraiser for Eagle County. Ms. Baranowski described the County's process for reclassification and referenced the statutes and direction from the ARL. Ms. Baranowski stated a questionnaire was sent to Petitioner in 2010 regarding classification and no response was received. There was no prior communication from

Petitioner of any of the claimed uses of the Subject Lot. The witness stated there were three different inspections of the Subject Lot by the witness and others from the Assessor's Office.

Ms. Baranowski described the Subject Lot as sloping and vegetated with sagebrush and other natural growth. The witness referenced pages 1-3 of Respondent's Exhibit 1 to illustrate the position of the Subject Lot and its relation to other properties in the area. Ms. Baranowski testified there was no evidence of any type of use after considerable effort to view as much of the Subject Lot as possible. The witness referenced Respondent's Exhibit E, pages 20 to 41, describing the views and topography from multiple locations. Ms. Baranowski pointed to the rising terrain of the Subject Lot from the Residential Lot and the superior views to the south. The witness stated there was no evidence other improved parcels were oriented to take advantage of views to the north.

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 did not 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 had entered a stipulation that there is a commonality of ownership between the Subject Lot and the Residential Lot.

Contiguity

The parties had entered into a stipulation that there is contiguity between the Subject Lot and the Residential Lot. Factually, the two lots are adjacent to one another, sharing a boundary line.

Use

The Board was not convinced 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 Petitioner's claimed uses of the Subject Lot.

Instead, the Board was persuaded by Respondent's witness, Ms. Joanie Baranowski, who conducted several site visits to view the Subject Lot and did not observe any evidence of any use claimed by Petitioner. Moreover, the Board found convincing the aerial maps of the Subject Lot presented by Respondent that showed no visible signs of uses of any sort. In addition, the Board found the testimony of Ms. Baranowski credible with respect to the natural state of the Subject Lot providing additional support to Respondent's claim that the Subject Lot was not used as a unit in conjunction with residential improvements on the adjacent Residential Lot. The Board was also

convinced by Ms. Baranowski's testimony that primary views from the Residential Lot are towards the south and away from the Subject Lot. The Board was also swayed by Petitioner's stated desire not to vacate the lot boundary.

After carefully considering all the evidence and the credibility of the witnesses, the Board is convinced that the Subject Lot was not used by Petitioner as a unit in conjunction with the improvements on the Residential Lot for tax years 2014-2015. Accordingly, the Board does not believe that any portion of the Subject Lot is entitled to residential classification for tax years 2014-2015. 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 in question of fact for BAA).

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

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
Dianne DeVries

Dianne M. DeVries

Gregg Near

Gregg Near

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

Milla Lishchuk

Milla Lishchuk

