

2022
ROUTT COUNTY BOARD OF EQUALIZATION
Hearing Date: July 21, 2022 @ 2:30pm

Account#: R8180647 **PIN#:** 316100002

Owner of Record: MARK JAMES HERMACINSKI & CARI HERMACINSKI JOINT LIVING TRUST

Legal Desc: LOT 2 SODA CREEK OVERLOOK

Appraisal Date: June 30, 2020 **Assessment Date:** January 1, 2022

Sales Collection Period: 24 months - from July 1, 2018 thru June 30, 2020

2022 Original Assessor Value: **\$450,000**; Classified as Recreation Land; Adjusted to: \$426,910 at the Assessor Level. Valuation is not being contested; appeal is for classification only.

Property Type: Vacant Land

Appeal Summary: The subject parcel is a .19-acre vacant lot, adjacent to the Petitioner's residentially improved parcel. Petitioner is appealing the classification assigned to the Subject property for Tax Year 2022 of Vacant Land. Petitioner is requesting the subject property be reclassified as Residential. Petitioner states in their appeal that the subject parcel meets the statutory definition of Residential Land as containing an essential improvement to the adjacent residential parcel.

The Petitioner's appeal at the assessor-level to reclassify the Subject as Residential was denied; however, the parcel was reclassified as Recreation Land and a 5% downward adjustment was made on the land value. The Subject property was physically inspected by the Assessor and County Appraiser on June 9th, 2022 in response to the filed protest. The owner (petitioner) was not present for this site inspection.

Discussion: During the 2021 Colorado Legislative session, House Bill 21-1061 was introduced and subsequently signed into law by Governor Polis in April of 2021. The change in law taking affect for the next property assessment date of January 1st, 2022. HB21-1061 changed the statutory definition of Residential Land for the purposes of property tax classification, as found in §39-1-102(14.4)(a)(I). The focus of the changes made to the definition involved parcels of land without a residential dwelling. The signed bill is made part of this report as **Exhibit A**. Similar to the old definition, there are three criteria that need to be met for an otherwise vacant parcel to qualify for a residential classification; those three criteria are summarized below:

- a) **Contiguous** - the boundary line of the subject vacant parcel is physically touching the improved residential parcel's boundary line. However, contiguity is not interrupted by an intervening local street, alley, or common element in a common-interest community.

- b) **Common Ownership** – Identical ownership based on the record of title, between the vacant parcel (subject) and improved parcel containing a residence.
- c) **Use** - The parcel without a residence contains a related improvement that is essential to the use of the residential improvement next door. “Related Improvement” is further defined within the statute to mean a driveway, parking space, or improvement other than a building, or that portion of a building designed for use predominantly as a place of residency.

The biggest change in this statutory definition from the prior version is the criteria of Use, or how the vacant parcel is used in connection with the house parcel. Removed from the statute was the phrase “...used as a unit in conjunction with the [adjacent] residential improvement....” Replaced by item ‘C’ above “a related improvement that is essential” to the adjacent residence. The key word added is the term “**essential**”. This was deliberate as the former phrase for how the parcel is used was very broad in meaning and the supreme court rulings rejected the Property Tax Administrator’s direction to the assessors in the A.R.L. using the terms ‘integral’ and ‘likely to convey together’ as part of the criteria as terms that were simply not a part of the statutory language. Therefore, the word ‘essential’ was purposely chosen to establish an unmistakable high degree of necessity to the use criteria of the related improvement; a use that is active rather than passive in its character or nature. The legislative intent of the “related improvement” language chosen was to be somewhat specific while putting some teeth to the use criteria of a non-dwelling parcel in relation back to the house parcel.

Judgement of the Criteria

Two of the three criteria found in the statutory definition for an otherwise vacant parcel receiving the Residential classification requires a subjective judgement on the part of the assessor’s office. The ownership criteria is very much a factual determination and is based on the assessment date - as of January 1st is the ownership of record identical – with variations allowed by statute for middle initials, and full names vs. shorten names. The Subject is not in dispute on meeting the ownership requirement. The second criteria of contiguous in the case of the subject parcel and the adjacent house parcel is also straight forward as the two parcels touch along a common boundary line, so the criteria of Continuity is clear and conclusive. This leaves the third criteria of a related improvement essential to the house parcel – this criteria is always a judgment call for the assessor’s office; this has not changed from the prior definition and the new definition. It is something highly subjective, and should only be determined on a case-by-case basis. The policy or standard established by the Routt County Assessor as it pertains to the vacant-contiguous parcels for the third criteria of a related improvement essential to the adjoining residence is this:

Does the related improvement solve (or mitigate) an inadequacy or dysfunction of the house parcel? A house without secured access is a dysfunction, and thus the need to control the parcel with the driveway is considered essential is one example. A house or condo without adequate parking available is another; if the only room for a garage or parking is across the alley on another lot, owning and using that second parcel in that capacity solves a dysfunction of the house parcel and therefore would be considered ‘essential’. A house without adequate yard space, and the vacant parcel next door is developed into a functioning landscape to serve as the home’s

primary yard space can be looked at as solving an inadequacy of the house parcel and its lack of an appropriate yard area.

The judgment is against the property, not the owner. Example: a house with a 3-car garage is certainly providing adequate parking to a single-family residence. However, a particular owner with a large RV, a ski boat and fishing dory may find this 3-car garage house and its driveway is inadequate for his need or desire to house his recreational toys and feel the need to have a secondary garage on a second lot, and consider that essential to him owning a residence. The focus of these judgements is on the real estate, not the owner. Thus the question in these cases to be answered is: Does the related improvement solve (or mitigate) an inadequacy or dysfunction of the house parcel (real estate)? The standard given by the statutory language is 'essential'. The simple dictionary meaning of that word is *absolutely necessary; indispensable*. The R.C. Assessor's Office does not focus on the term of absolutely, but does very much look at these cases and the improvements under the terms of "necessary or indispensable" back to the residential property.

Subject Property's Applicability to the Res Land Definition

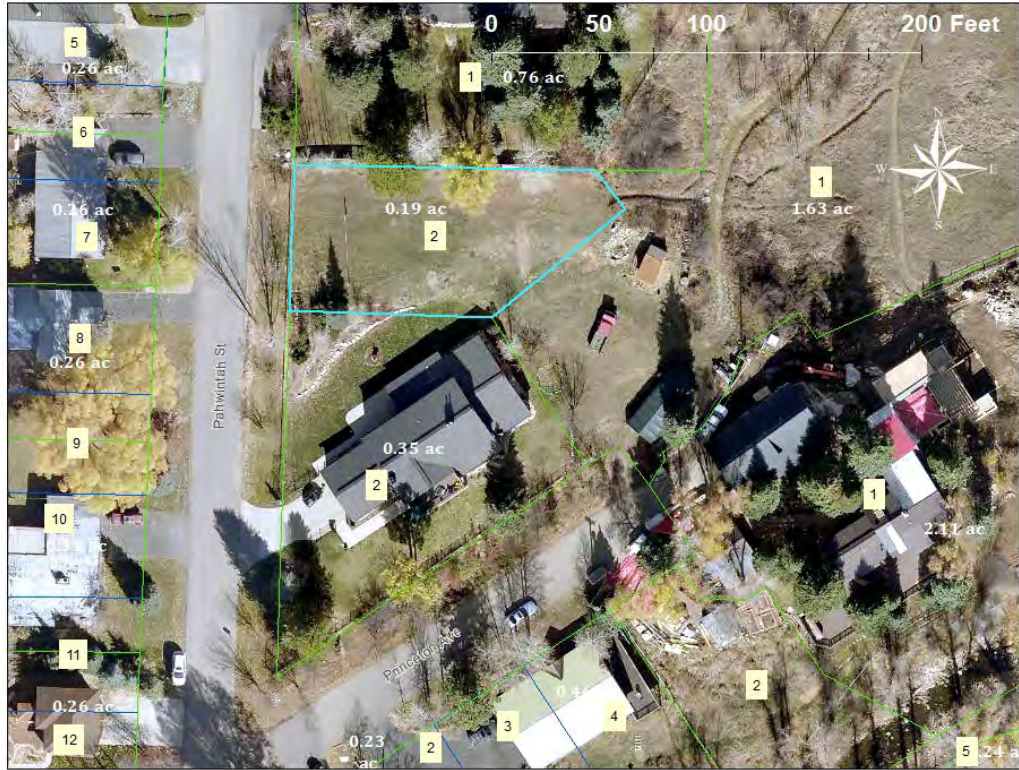
The Subject property is held in common ownership with the Petitioner's residentially improved parcel next door as of the January 1st, 2022 assessment date and the two parcels physically touch. Therefore, the Subject meets the first two criterion of continuity and identical ownership found in the statutory definition.

As to a related improvement found on the Subject property, the Petitioner is claiming the vacant lot serves as a parking pavilion or "auto plaza" for all their vehicles since their garage is mostly used for storage. The Petitioner has also built stairs connecting the house parcel to the Subject along with a sprinkler system on the back half of the lot.

During the June 9th site inspection, the assessor's office conducted a review of both the house and vacant parcel. The assessor and appraiser did inspect the parking area consisting of recycled asphalt aggregate (not paved) along with a makeshift badminton court, a hayshed like structure (carport?) and a chicken coop (not mentioned in the appeal). The hayshed structure appeared to house recreational and outdoor equipment. The Subject sits higher than the house parcel and a retaining wall runs along the boundary line of the two lots.

The house parcel sitting on .35 acres is equipped with a 650sf two car garage. There is manicured lawn and landscaping on all four sides of the house, though the back of the house is very close to the lot line. Several site photos are provided in the following two pages of this report to illustrate the relationship between the Subject's improvements and that of the adjacent house parcel and its landscaping. An aerial photo taken in 2016 is provided first.

2016 City Aerial of House parcel and Subject Vacant Lot



August 2019 Google Earth image (below) showing “Auto Plaza”



Below: street view of both the Subject vacant parcel (left), and the adjacent house parcel (right).





Appraiser’s Conclusion & Recommendation:


The question of judgement in this appeal case is does the Subject parcel solve an inadequacy of the house parcel – or a dysfunction? While the Subject does provide a nice recreational area and additional yard space, no improvements located on the parcel were found that to be essential back to the use of the adjacent house parcel. Keeping in mind that this judgment in classification is not a judgment against the owner but the property itself, the “auto plaza” does not make up for an inadequacy or dysfunction of the residence next door. While the space does allow for more parking, and with the Petitioner’s claim of using the garage for storage, at least one vehicle was parked in the garage at time of the site visit. Regardless, the house parcel does not lack typical parking capacity with the large 2-car garage and accompanying driveway of 30+ feet to the lot line. The house parcel certainly has adequate yard areas on two sides of the house – both with fencing.

The Assessor and County Appraiser’s conclusion is while the improvements found on the Subject parcel may certainly add convenience or enjoyment to the adjacent house parcel, the Subject’s improvements are not solving or mitigating a dysfunction of the house parcel. They may certainly

add some convenience and recreational enjoyment to the adjacent house, but they cannot be considered essential to the use of the residential property next door. The Subject acts more as a recreational area and the “hayshed” improvement storing the recreational equipment supports this conclusion.

The Assessor’s Office recommendation is to deny the petitioner’s appeal to reclassify the subject to Residential, while maintaining the current classification of Recreation Land.

Respectfully submitted,



Jordan Larsen,
County Appraiser
Routt County Assessor’s Office



Gary Peterson
Elected Assessor
Certified Residential Appraiser
CR40021518

Exhibit A

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Yellow Highlights are those of the Assessor

HOUSE BILL 21-1061

BY REPRESENTATIVE(S) Gray, Duran, Kennedy, Roberts, Titone;
also SENATOR(S) Hansen, Moreno, Story.

CONCERNING THE DEFINITION OF RESIDENTIAL LAND FOR THE PURPOSE OF
PROPERTY TAX CLASSIFICATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-1-102, **amend**
(14.4)(a) as follows:

39-1-102. Definitions. As used in articles 1 to 13 of this title 39,
unless the context otherwise requires:

(14.4)(a)(I) "Residential land" means 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.~~ The term **ALSO** includes: ~~parcels of land in~~
~~a residential subdivision, the exclusive use of which land is established by~~
~~the ownership of such residential improvements.~~

(A) ~~The term includes~~ Land upon which residential improvements

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes
through words or numbers indicate deletions from existing law and such material is not part of
the act.*

Exhibit A

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were destroyed by natural cause after the date of the last assessment as established in section 39-1-104 (10.2);

(B) ~~The term also includes~~ Two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land; AND

(C) A PARCEL OF LAND WITHOUT A RESIDENTIAL IMPROVEMENT LOCATED THEREON, IF THE PARCEL IS CONTIGUOUS TO A PARCEL OF RESIDENTIAL LAND THAT HAS IDENTICAL OWNERSHIP BASED ON THE RECORD TITLE AND CONTAINS A RELATED IMPROVEMENT THAT IS ESSENTIAL TO THE USE OF THE RESIDENTIAL IMPROVEMENT LOCATED ON THE IDENTICALLY OWNED CONTIGUOUS RESIDENTIAL LAND.

(II) ~~The term~~ "RESIDENTIAL LAND" does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5).

(III) AS USED IN THIS SUBSECTION (14.4):

(A) "CONTIGUOUS" MEANS THAT THE PARCELS PHYSICALLY TOUCH; EXCEPT THAT CONTIGUITY IS NOT INTERRUPTED BY AN INTERVENING LOCAL STREET, ALLEY, OR COMMON ELEMENT IN A COMMON-INTEREST COMMUNITY.

(B) "RELATED IMPROVEMENT" MEANS A DRIVEWAY, PARKING SPACE, OR IMPROVEMENT OTHER THAN A BUILDING, OR THAT PORTION OF A BUILDING DESIGNED FOR USE PREDOMINANTLY AS A PLACE OF RESIDENCY BY A PERSON, A FAMILY, OR FAMILIES.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

Exhibit A

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November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE

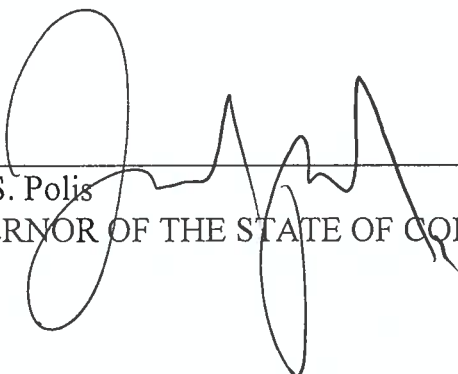


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED April 27, 2021 at 12:00 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO