

2022
ROUTT COUNTY BOARD OF EQUALIZATION
Hearing Date: August 3rd, 2022 @ 2:30pm

Account#: R6771102 **PIN#:** 176503001

Owner of Record: HERBST, JOHN M.

Legal Desc: LOTS 1 & 2 & N 16 1/2' OF LOT 3 BLOCK 3 WOOLERY ADD TO SS

Appraisal Date: June 30, 2020

Assessment Date: January 1, 2022

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

Definition of Market Value: “The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.” The Appraisal of Real Estate, 12th ed., 2001, page 22.

2022 Original Assessor Value: **\$323,610**; Classified as Vacant Land; Denied at 2022 assessor-level appeal. Both Valuation and Classification are being protested. Petitioner has provided a value estimate of \$100,000 to \$125,000.

Property Type: Vacant Land

Appeal Summary: The subject parcel is a .19-acre vacant lot, behind the Petitioner’s residentially improved parcel- separated by a platted alley way, but remains undeveloped. Petitioner is appealing the classification and value assigned to the Subject property for Tax Year 2022 of Vacant Land. Petitioner is requesting the subject property be reclassified as Residential or the value be adjusted to reflect the costs needed to meet building code requirements for the Subject. Petitioner states on their appeal form that the use of the Subject parcel meets the statutory definition of Residential Land as containing an essential improvement to the adjacent residential lot.

The Petitioner’s appeal at the assessor-level was denied. The Subject property was inspected via site visit by the Assessor and County Appraiser on June 8th, 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 considered contiguous. Though the two parcels do not touch along a common boundary line. The statute expressly says “...that continuity is not interrupted by an intervening local street, alley, or common element in a common-interest community.” So therefore, the criteria of Continuity is considered met with the platted alley way between the two parcels.

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, and what is also typical for that neighborhood or subdivision in regards to judging the property.

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'. A simple dictionary meaning of that word is *absolutely necessary; indispensable*. The Colorado Supreme Court referenced Merriam-Webster Dictionary in the Hogan case that 'essential' means "*of the utmost importance.*" Black's Law Dictionary (6th edition) definition reads: "*Indispensably necessary; important in the highest degree; requisite. That which is required for the continued existence of a thing.*" 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 use of the residentially improved parcel."

Subject Property's Applicability to the Res Land Definition

The Subject property is held in common ownership with the Petitioner's residential improved parcel next door as of the January 1st, 2022 assessment date and the two parcels are considered contiguous under the language of the statute.

As to a related improvement located on the subject property, the assessor's office in its inspection of the Subject found the following; the front half of the Subject contains several older and even antique (classic) vehicles that appear to be parked and stored on a long-term basis, along with a small shed of barely 100sf in size. This half contains a natural grass bed that is mowed or cut periodically; the other half of the lot is left in its natural state. The access mentioned by the Petitioner in their original letter to the assessor's office cuts through the house parcel to the back yard. This access is not improved and is instead just a mowed down portion of the yard. The Petitioner also mentioned the Subject has many recreational uses, but no improvements except for the small shed were found on the Subject.

The house parcel is also 0.19-acres, and the house (built in 1904) is listed at 1,140sf. Towards the back of the parcel is an 816sf oversized two-car detached garage – built in 1986. The garage actually has a larger footprint than the house.

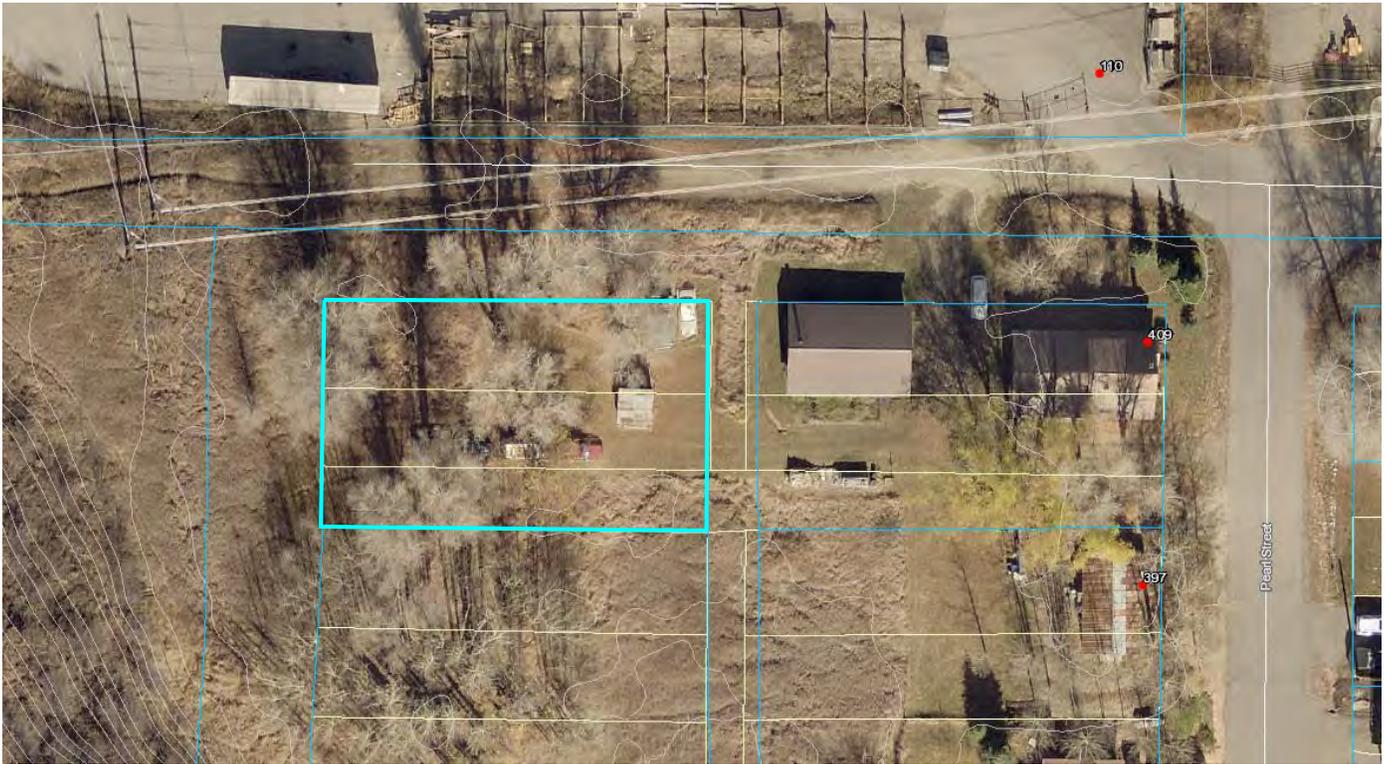
The Petitioner claims the 7 culverts located on both lots need to be kept clear to mitigate flooding of the residence. The Petitioner is claiming this flooding issue needs to be addressed to make the vacant Subject ready for development and therefore says the lot should be valued at \$100,000 to \$125,000. This equates to a costs-to-cure for the annual flooding to a cost between \$198,610 and \$223,610 – against the current valuation of \$323,610. These estimates are not supported by any submitted evidence of engineering reports or anything from the City saying what needs to be addressed on the lot in order to issue a building permit. Typically, documentation from engineers are needed to support this type of claim. Both lots are flat and are located next to a Yampa Valley Electric sub-station. Because of this, both lots already have a -15% adjustment applied to their Actual Value.

Photos from the June 8th site visit and aerials are shown below to demonstrate the relationship between the Subject and adjacent house parcel.

2016 Aerial showing Subject to the left and house parcel to the right



2016 Aerial with contour lines



2016 Aerial showing neighboring parcels along Pearl Street



Below: view of shed and vehicles on Subject (Left)



View of vacated alley between parcels (Right)



Below: View of garage and house from alley (Left)



Front of garage looking towards Subject (Right)



Below: View of the back of the house (Left)



Street view of the front of the house (Right)



Below: View from Agate Street of Subject



View of Subject from back of parcel (west)



Appraiser’s Conclusion & Recommendation:

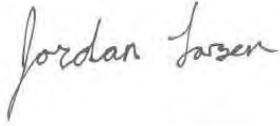
The question of judgement in this appeal case is does the Subject parcel have a related improvement that solves an inadequacy of the house parcel – or a dysfunction? While the Subject’s mowed yard area does offer extra storage space – for old cars in this case - there are no actual improvements found on the Subject (other than the small shed) that solve an inadequacy of the house parcel that could be considered essential. The oversized two-car garage located on the house parcel offers a sufficient amount of parking in, or around this structure. The single actual improvement located on the Subject – the small shed - is not seen as being an essential improvement back to the house parcel and its 816sf garage structure.

The estimate the Petitioner provided regarding a costs-to-cure the Subject’s flooding issue seems excessive in its costs amounts, and has not been supported with any submitted evidence.

The recreational uses mentioned by the Petitioner are also very specific to the owners use and not the real estate itself. The house parcel could stand alone very similar to the neighboring houses down the street in its current state.

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

Respectfully Submitted,



Jordan Larsen
County Appraiser
Routt County Assessor's Office
CR40021518



Gary Peterson
Elected Assessor
Certified Residential Appraiser

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

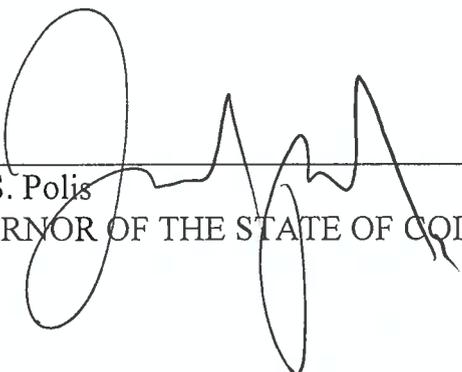


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



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