

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

**Account#:** R8173038      **PIN#:** 284800009

**Owner of Record:** CLARK, JONATHAN & CAROL (JT)

**Legal Desc:** LOT 9 BOULDER RIDGE SUBD

**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: **\$985,000**; Classified as Vacant Land; Denied at 2022 assessor-level appeal. Valuation is not being contested; appeal is for classification only.

**Property Type:** Vacant Land

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**Appeal Summary:** The subject parcel is a 0.81-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 claims the improvements he has made to the Subject and the access to the back of the house parcel provided by the subject lot is essential.

The Petitioner’s appeal at the assessor-level was denied. The Subject property was inspected via by the Assessor and County Appraiser on June 8<sup>th</sup>, 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 1<sup>st</sup>, 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 1<sup>st</sup> 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, 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 (6<sup>th</sup> 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 1<sup>st</sup>, 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 claimed at the Assessor level of appeals the vacant lot is needed as a means to access a hot tub located on the improved parcel via a two track trail that wraps around the vacant parcel to a soft scape patio. The Petitioner claims this 2-track is the only way a crane can access the property to service the hot tub. A boulder was placed at the entrance by the Petitioner to limit trespassing onto their lot. The soft scape includes a portable fire pit and some lighting that feeds off of the house parcel's electric supply. The Subject also offers the best views, and the top of the lot is the only place for views of the south valley floor. These improvements were seen during the June 8<sup>th</sup> site visit. Fire mitigation was also mentioned by the Petitioner.

The house parcel is .64-acres and the house is listed at 7,400sf, plus a 4-car garage. While walking the home parcel it was apparent a significant amount of hardscape landscaping along the shared boundary line connects with the landscaped path to the soft scape patio. It was also noticed that another hot tub was located on the second story deck along with another fire pit situated on the back patio. Located on the north side of the house is an 8-10 foot wide manicured lawn area that wraps around to the backyard. When examining aerials of the two parcels, it was noticed the start of the 2-track access the Petitioner uses is actually located on Lot 8, not owned by the Petitioner. When looking at photos from the June 8<sup>th</sup> site visit it appeared the property stake was removed, but a photo from Google Earths Street view shows this stake was in place in 2019. This photo, aerials and photos from the site visit are shown on the following pages.

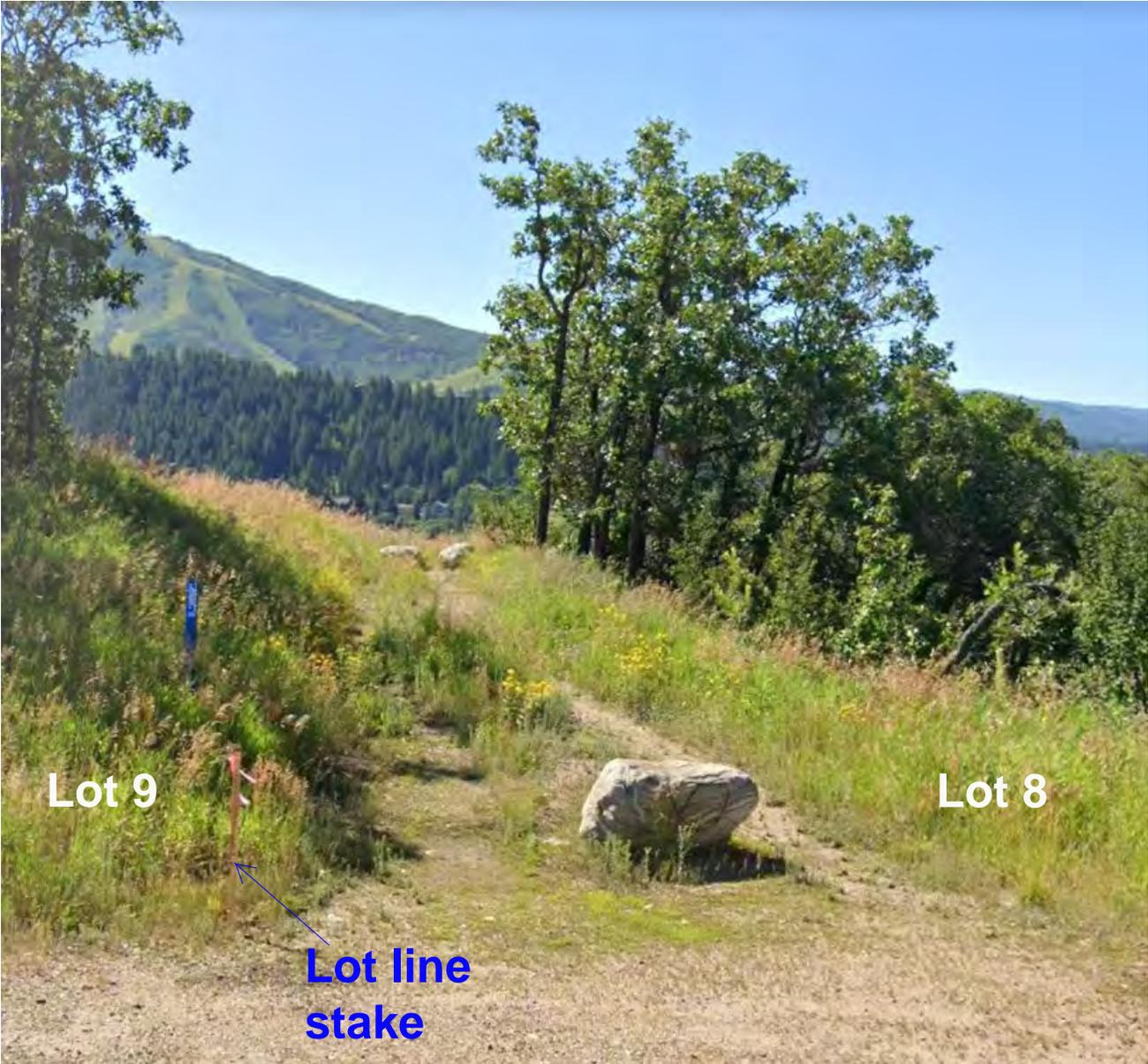
2016 Aerial Showing Subject and House Parcel (Best Resolution)



2021 Aerial showing Improvements and 2-track



2019 Google Earth Street View



Below: View of 2-track Entrance



View of start of trail from Soft Scape Patio



Below: Soft Scape Patio area



Stairs and Path to House Parcel



Below: View of Landscaping along Boundary Line



Fire pit on house parcel (Right)



Below: Manicured lawn area to front of house (Left)



Front View of House (Right)



Portion of Plat



## 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 two-track trail does provide a very rough access to the improved parcel, the assessor's office believes a crane of the size needed to reach the hot tub would have a difficult time maneuvering up the winding path to service the hot tub located in the back yard. Since the access to this path is also located on Lot 8 and not Lot 9 the assessor's office does not support the idea of trespassing as an essential means to access the parcel. Furthermore, the Assessor believes the open space located along the northern side of the house parcel could easily allow access for dollies or other moving equipment to service the hot tub, and this would be the practical method of servicing or replacing the hot tub.

While providing a beautiful view, the soft scape patio and associated lighting is also not making up for an inadequacy of the house parcel since a much nicer hardscaped flagstone fire pit is located on the back patio of the home. The lighting mentioned by the petitioner is minimal as well and could be easily removed if subject were to sell and does not rise to the level of an essential improvement back to the house parcel. Wildfire mitigation is also mentioned; while this is certainly a benefit to the house parcel, the removal of vegetation does not meet the technical term of "improvement" in regards to real estate of something affixed to the land.

The Assessor and County Appraiser's conclusion is while the soft scape improvements made by the Petitioner serve as a nice addition to the outdoor amenities of the Petitioner's properties, these improvements do not rise to a level of necessity that could be considered essential back to the house parcel. None of the improvements, and certainly not the trespassing 2-track trail are essential to the continued existence of the adjacent residence.

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



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

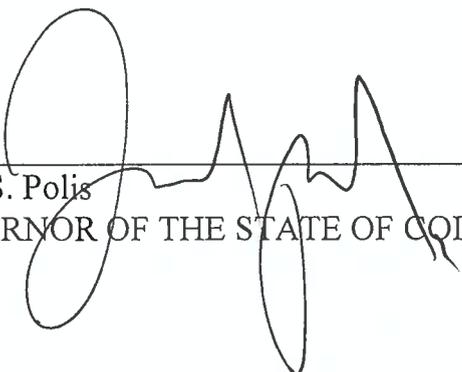


Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



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