2022
ROUTT COUNTY BOARD OF EQUALIZATION
Hearing Date: July 21, 2022 @ 1:00pm

Account#: R6259340 **PIN#:** 181900035

Owner of Record: BOYLE, JAMES P. & KATHERINE S.

Legal Desc: LOT 35 RUNNING BEAR 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: **$460,000;** Classified as Vacant Land**;** Denied at 2022 assessor-level appeal. Valuation is not being contested; appeal is for classification only.

Property Type: Vacant Land

Appeal Summary: The subject parcel is a 1.8-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 on their appeal form that 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 not physically inspected by the Assessor and County Appraiser, but a drive-by site visit was done along with a review of aerial photography.

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. HB21-1061changed 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 C**. 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 residential 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 assessor's office in its inspection of the Subject via aerials found the following; the parcel does provide access to the residential lot via a driveway. The Petitioner is claiming this improvement along with the fact that the lot is used for recreation such as sledding in the winter and walking their dogs should support a Residential classification. Petitioner also states that the term 'Driveway' is in the new language as part of the qualifying improvements, along with additional 'Parking' – also in the statute language.

One of the criteria used by the assessor's office regarding cases such as this one, where a driveway is present, is to determine if the driveway is an established secured access by either a deeded easement or by way of the filed Plat. According to the Running Bear Subdivision Plat a common driveway easement is in place in Area 4, which includes lots 33, 34, 35 and 36 recorded in Book 713, Page 962.

The legislative intent of the term 'Driveway' was for property access not secured by either deeded easement or recorded Plat easement. As is with this appeal, The Petitioner's house parcel has secured access to the property via the recorded Plat as well as a formal Declaration page recorded separately. Therefore, the actual driveway located on the Subject lot under appeal is fundamentally owned by the Petitioner's house parcel as the "Benefitting Lot" to the easement; thus ownership of the Subject is not required to maintain this access. Past BAA rulings on driveway easements have recognized this, with a local case in Catamount Ranch ruling that only the acreage of the actual easement was entitled to the Residential classification – about 6% of the acreage.

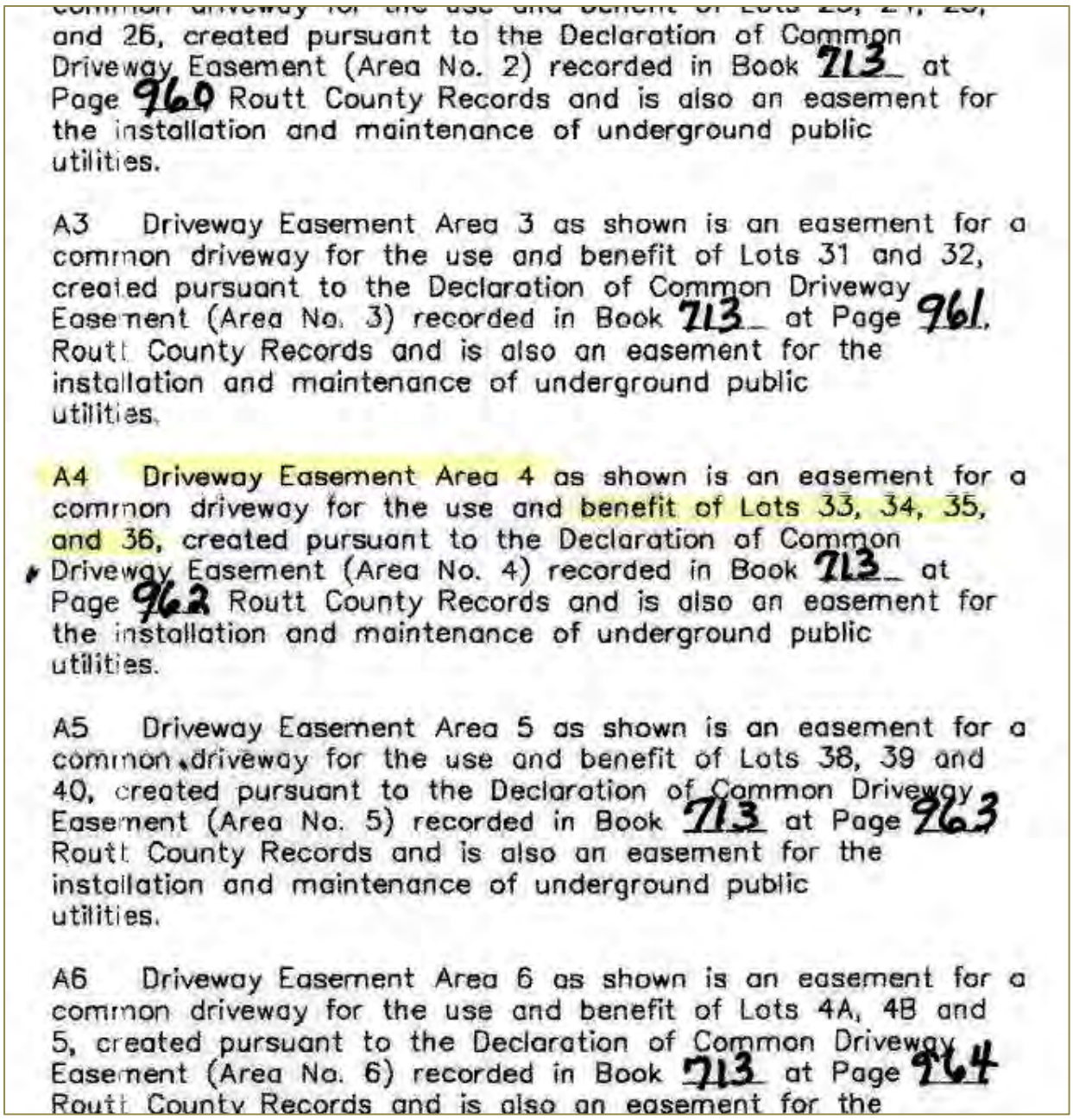
The Petitioner's residentially improved parcel is 1.59 acres and lies to the southwest of the Subject. The Petitioner's home is 5,674sf and includes an attached two-car garage. The driveway on the house parcel is substantial in size (>3,500sf) that allows for several additional parking spots outside of the garage. The Subject does have a paved turn-out that allows for parking of two additional cars, but this space, nor the remaining acreage of the vacant parcel that is not the secured driveway easement, does not contain any residential improvement that could be considered essential back to the use of the residence next door.

The Ownership by the Petitioner of the Subject parcel does nothing to enhance or secure legal access to the house parcel. Nor, does the Subject solve or mitigate any deficiencies of the house parcel; the house parcel has sufficient parking and yard area.

An aerial showing the Subject Lot 35, and the adjacent house parcel (lot 36) is shown below:

A zoomed-in portion of the Running Bear Plat follow on the next page.

zoomed-in portion of the Running Bear Plat



common driveway for the use and benefit of Lots 25, 24, 25, and 26, created pursuant to the Declaration of Common Driveway Easement (Area No. 2) recorded in Book 713 at Page 960 Routt County Records and is also an easement for the installation and maintenance of underground public utilities.

A3 Driveway Easement Area 3 as shown is an easement for a common driveway for the use and benefit of Lots 31 and 32, created pursuant to the Declaration of Common Driveway Easement (Area No. 3) recorded in Book 713 at Page 961, Routt County Records and is also an easement for the installation and maintenance of underground public utilities.

A4 Driveway Easement Area 4 as shown is an easement for a common driveway for the use and benefit of Lots 33, 34, 35, and 36, created pursuant to the Declaration of Common Driveway Easement (Area No. 4) recorded in Book 713 at Page 962 Routt County Records and is also an easement for the installation and maintenance of underground public utilities.

A5 Driveway Easement Area 5 as shown is an easement for a common driveway for the use and benefit of Lots 38, 39 and 40, created pursuant to the Declaration of Common Driveway Easement (Area No. 5) recorded in Book 713 at Page 963 Routt County Records and is also an easement for the installation and maintenance of underground public utilities.

A6 Driveway Easement Area 6 as shown is an easement for a common driveway for the use and benefit of Lots 4A, 4B and 5, created pursuant to the Declaration of Common Driveway Easement (Area No. 6) recorded in Book 713 at Page 964 Routt County Records and is also an easement for the

A copy of the Declaration of the Common Driveway easement for Area 4 follows on the next page.

DOCUMENTARY FEE
DATE 11/19/9[illegible]
$ none

RUNNING BEAR SUBDIVISION

DECLARATION OF COMMON DRIVEWAY EASEMENT
(Area No. 4)

RUNNING BEAR MANAGEMENT LIMITED LIABILITY COMPANY, a Colorado Limited Liability Company ("Grantor") hereby declares and establishes a perpetual, non-exclusive easement ("Easement") for the purposes and on the terms and conditions hereinafter specified in this Declaration:

(a) In this Declaration, the term "common private driveway improvements" shall mean the driveway and related improvements, including paving, landscaping, slopes, barrow pits, retaining walls and other associated improvements constructed within the Easement Area (as defined below) and intended for common use to provide vehicular and pedestrian access to and from the Benefitted Lots (described below). The term "private driveway improvements" shall mean any driveway and parking areas and related improvements, including paving, landscaping, slopes, culverts and other associated improvements which are not common private driveway improvements. Private driveway improvements may be adjacent or connect to common private driveway improvements and may be constructed in whole or in part within the Easement Area. Private driveway improvements are not for common use, but rather for use only by the Owner of the property upon which such improvements are constructed. Common private driveway improvements are subject to the joint maintenance and reimbursement provisions of this Declaration, but private driveway improvements are not. This Declaration does not grant or create any easement or other right to use private driveway improvements.

(b) The Easement is located in the area designated "Driveway Easement Area 4" (the "Easement Area") on the plat of Running Bear Subdivision in File No. 1273 of the Routt County, Colorado real estate records (the "Plat").

(c) The purposes of the Easement are (i) the construction, maintenance, repair and use of common private driveway improvements within the Easement Area; (ii) the removal and storage of snow which may fall or accumulate on the common private driveway; and (iii) the maintenance and landscaping of the uphill and downhill slopes, barrow pits and culverts adjacent to the common private driveway.

(d) The Easement shall be for the use and benefit Lots 33, 34, 35 and 36 shown on the Plat (the "Benefitted Lots"). The Easement is intended to provide access via a common private driveway from Bear Drive as shown on the Plat to the Benefitted Lots. The Easement shall burden Lots 34 and 35 shown on the Plat (the "Burdened Lots"). The Easement is private and may be used and enjoyed only by the occupants of Benefitted Lots and their respective guests and invitees. Subject to the provisions of this Declaration, portions of Burdened Lots upon which the Easement Area is located may be used for any purpose not inconsistent with the Easement. The Easement shall be appurtenant to the Benefitted Lots, shall run with the land, and shall be a perpetual benefit to and burden on the Benefitted Lots and perpetual burden on the Burdened Lots.

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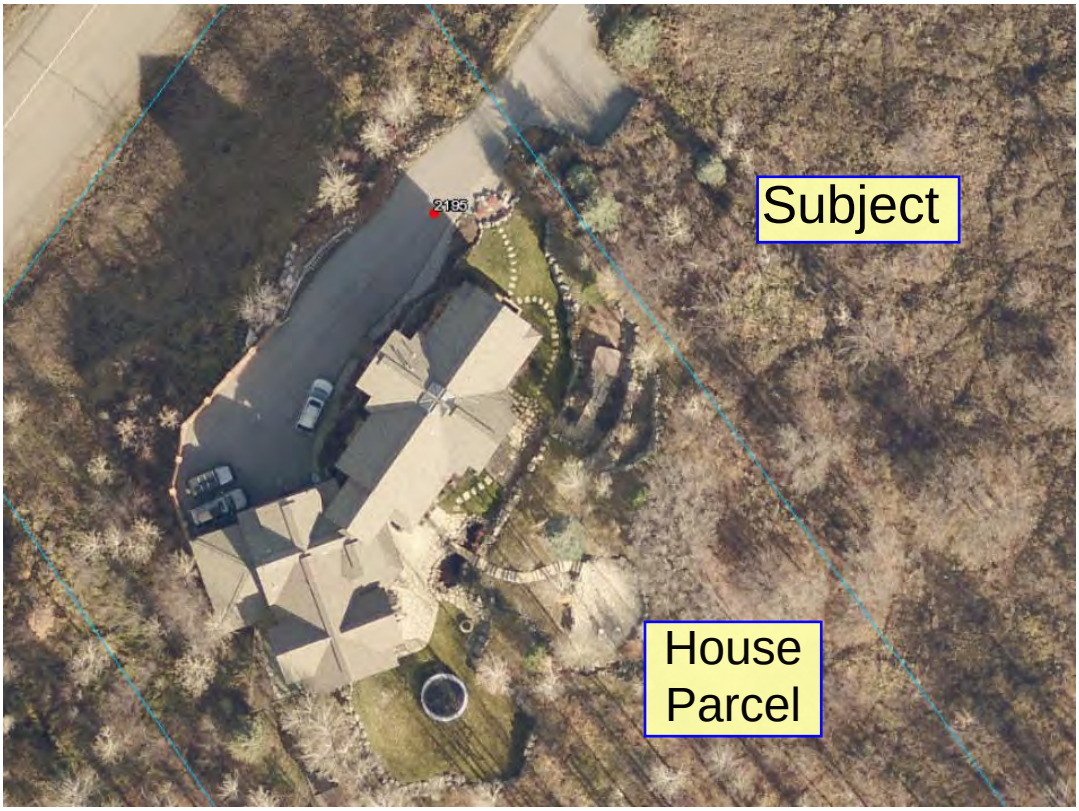
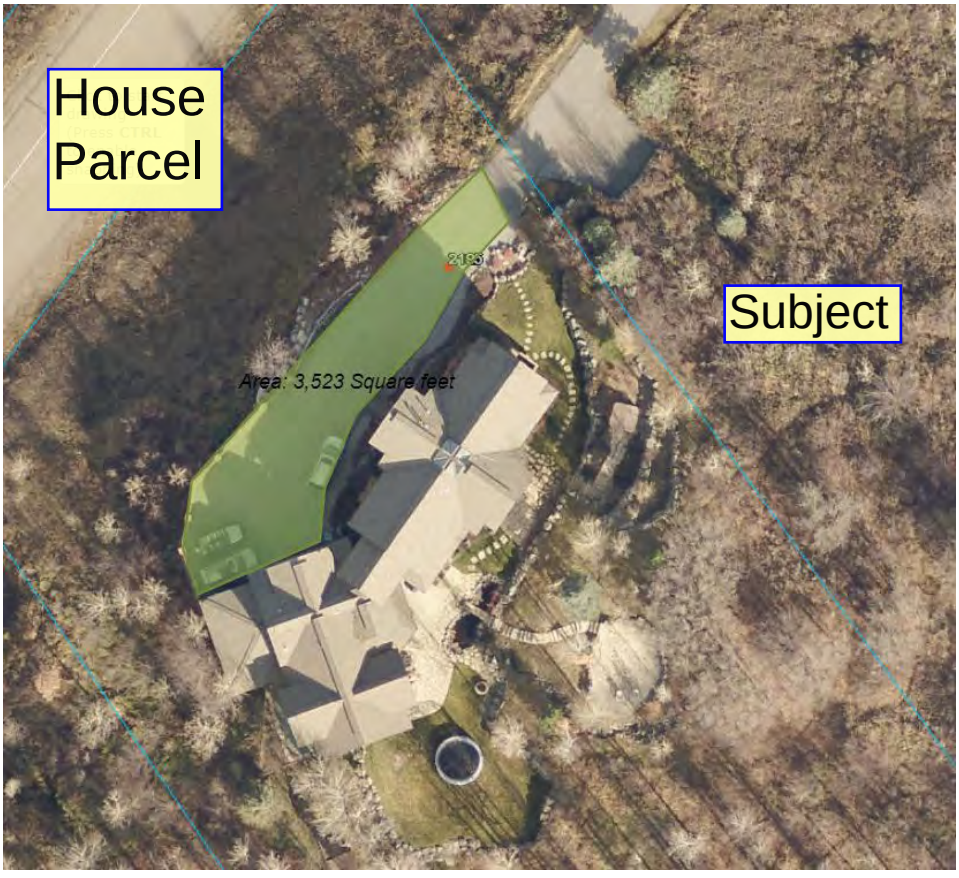
Kay Weinland Routt County Clerk & Recorder 41.00 0.00



Aerials showing house parcel's yard area and parking area



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 driveway used to access the house parcel does cut across the Subject, the fact that an easement for said driveway exists and that "easement shall be appurtenant to the Benefitted Lots, shall run with the land, and shall be a perpetual benefit to and burden on the Benefitted Lots and perpetual burden on the Burdened Lots."

Because of this easement securing access to the house parcel, there is no other improvement on the Subject parcel to support the request to change the Subject's classification back to Residential. There is no inadequacy of the house parcel being fixed or mitigated by the Subject. Since the driveway easement exists on the plat the Petitioner is not at risk for losing access to their property if the Subject were to be sold off. Regarding the recreational use the Petitioner mentioned, a private sledding hill would serve as an extra recreational amenity, but not an essential element the house parcel lacks. The house parcel has plenty of manicured yard space, with about half the parcel left in its natural state to walk their dogs if needed. Though this terrain - and the Subject's - really is unlikely terrain to be walking your dog on as it is a fairly moderate slope with heavy natural vegetation – the public street of Bear Drive better suits this activity. Regardless, there is not a related residential improvement to speak of to consider as essential back to the house parcel, and the driveway itself is a legal appurtenance to the house parcel – an asset belonging to and passing with the principal (house) property.

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. The recommendation is the entire parcel remains classified Vacant, as the Catamount Ranch ruling is inconsistent with how properties are classified (and assessed) as a Unit, rather than divisions or components based on easements.

Jordan Larsen,
County Appraiser
Routt County Assessor's Office

Gary Peterson
Elected Assessor
Certified Residential Appraiser
CR40021518

Exhibit B

Petitoner's appeal letter submittal at the assessor-level of appeal

Additional information on appeal of reclassification for Parcel #181900035.

The Routt County Assessor has reclassified the subject parcel "from Residential land to Vacant land, per HB21-1061."

HB21-1061, Concerning the Definition of Residential Land for the Purpose of Property Tax Classification, revised Colorado Revised Statutes, Section 39-1-102 to amend subsection (14.4)(a) is attached.

The amendment corrected the previously erroneous manner in which vacant parcels were being assessed by County Assessors in accordance with recent Colorado Supreme Court decisions. In particular, vacant parcels "without a residential improvement located thereon" are to be classified as residential 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."

The subject parcel is contiguous to Parcel #181900036 which is held in identical ownership to the subject parcel (both are held in the names of James P. Boyle and Katherine S. Boyle as joint tenants with the right of survivorship). "Contiguous" is defined in the amendment as meaning that "the parcels physically touch" which is the case here (see attached map).

"Related Improvement" was defined in the amendment as meaning "a **driveway**, **parking space**, or improvement other than a building, or that portion of a building designed for use predominantly as a place of residence by a person, a family, or families." In this case, as can be seen on the map, there is a **driveway** running across the subject parcel that services the residential parcel. In addition, the owners constructed a spur off of the driveway on the subject parcel on which they **park** two to three vehicles. The owners use the lot for recreation, sledding and almost daily for walking their dogs.

In sum, the subject parcel fits exactly into the definitional amendments made in HB21-1061 and petitioner is at a loss as to why the Assessor has reclassified it as vacant land. The plain meaning of the amendment clearly defines as residential land a contiguous parcel held in identical ownership that has a driveway and parking on it.

An Act

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.

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

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