



MEMORANDUM

To: Board of County Commissioners
From: County Attorney's Office
Date: May 29, 2018
cc: Planning Commission
Re: **Implications of Land Use Approvals and Zoning Classification of Property for Tax Assessment Purposes**

I. INTRODUCTION

This memo will discuss how and when zoning map classifications, or the existence of other approvals such as approved plats or master plans and development agreements, may affect classification of property for tax assessment purposes. Many members of the community have expressed concern that if the Board of County Commissioners ("BoCC") adopts a zoning map, their property may be taxed at a higher rate. A small minority of the community has gone so far as to express concern that the Planning Department's recommendation to zone is motivated by a desire to generate revenues for the County to alleviate the County's current fiscal challenges.

It is true that the economic, social and environmental impacts of development are often significant and, as the County's capacities are stretched, each new development could have an impact on the fiscal sustainability of the County and its ability to service its residents. As such, Planning Staff's recommendation to implement a zoning map is, in part, motivated by the County's need to become better attuned to the cost of growth and the most efficient use of taxpayer dollars. As discussed below, however, taxes paid by a property owner are based on *actual use* of the property by the owner or lessee, not potential future uses as depicted on a zoning map.

Further, staff acknowledges that land use regulations can affect property values, positively or negatively.¹ To the extent they are positive and increase property values, it is true the County's revenues would increase because of increased property values.

II. OVERVIEW OF CURRENT LAW AND PROCESS

- A. **Zoning Classifications**: Zoning will be discussed in more detail in other memos related to potential options for land use planning and development in La Plata County. For purposes of this memorandum, it is sufficient to state that zoning specifies how a property may be developed currently *and* in the future. In contrast, the County Assessor values and taxes a property based only on its current use. Zoning classifications and assessment classifications are two parallel,

¹ See e.g. Patrick W. Beaton, *The Impact of Regional Land-Use Controls on Property Values: The Case of New Jersey Pinelands*, 67 Land Econ. 172, 175 (1991).

Memo re: Classification of Property for Tax Assessment Purposes

Page 2 of 6

yet separate systems and, but for limited exceptions discussed below, do not influence one another as to taxation or land use regulations.

- B. **Classification of Property for Assessment/Tax Purposes:** The County Assessor is tasked with classifying and valuing all taxable and exempt property (both real and personal) located in the county on January 1st of each year, the applicable assessment date.² C.R.S. § 39-5-101. “Classification consists of determining the correct class for all property located in the county *according to its use*. ...” The proper classification will have a bearing on both the method used to value the property and the assessment rate applied.” *2 Assessors’ Reference Library* §1, at 1.1 (emphasis added). Further, once a property is classified by the Assessor for tax purposes, it must generally remain so classified until the *actual use* of the property changes or the Assessor discovers that the classification is erroneous. C.R.S. § 39-1-103(5)(c). These requirements mean, that despite a new or changed designation in zoning, parcels of real property must be valued based on their actual use; zoning is not the determining factor.³

According to the Assessors’ Reference Library, which is promulgated by the Colorado Division of Property Taxation and is binding on assessors, “[e]vidence for determining actual use can include observations made during a field inspection, correspondence with the owner or other individuals, the legally permitted use, and the use for which improvements were constructed or later modified. If the actual use cannot be determined, the property should be classified according to its most probable use.” *2 Assessors’ Reference Library* §6, at 6.1.

Property Classes and Subclasses:⁴ Pursuant to state law, land may be classified in one of the following ways. Again, it is important to note that the *actual use* of property will determine its classification for tax assessment purposes, not just its approved, zoned use:

1. **Vacant Land** – This classification includes, but is not limited to, the following subcategories:
 - a. Residential Lots
 - b. Commercial Lots
 - c. Industrial Lots
 - d. Unplatted Vacant Land
(categorized based on size)

² If there is a change in the use during the year, a property’s classification cannot be changed until the following January 1st. *2 Assessors’ Reference Library* §6, at 6.8. For example, if a subdivision or condominium plat is processed during the year, the original classification and valuation must remain the same until the next January 1st. *Id.*, at §3, at 3.14.

³ However, as discussed below, regarding *vacant* land, a change in zoning or the existence of an approved plat or other agreement, such as a master plan or development agreement, that designates permitted densities and uses of a vacant parcel, is taken into account in determining the appropriate classification and valuation of such *vacant* land. *See e.g., Bd. of Assessment Appeals of State of Colo. v. Colorado Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988) (reasonable future use is relevant to current market value for tax assessment purposes based on vacant property’s present condition).

⁴ This memo does not discuss mixed use properties and allocation of land to primary and secondary uses when multiple uses of a parcel occur.

Memo re: Classification of Property for Tax Assessment Purposes

Page 3 of 6

Vacant land has no buildings or fixtures, other than minor structures, and is defined as follows:

“Vacant land” means any lot, parcel, site, or tract of land upon which no buildings or fixtures, other than minor structures, are located. “Vacant land” may include land with site improvements. “Vacant land” includes land that is part of a development tract or subdivision when using present worth discounting in the market approach to appraisal; however, “vacant land” *shall not include* any lots within such subdivision or any portion of such development tract that improvements, other than site improvements or minor structures, have been erected upon or affixed thereto. “Vacant land” *does not include agricultural land, producing oil and gas properties, severed mineral interests, and all mines, whether producing or nonproducing.*

C.R.S. § 39-1-103(14)(c)(I) (emphasis added). As noted above, vacant land does not include agricultural land that is being used as a farm or ranch (as defined below).

2. **Residential Real Property** – This classification includes, but is not limited to, the following subcategories:

- a. Single Family Residence
- b. Farm/Ranch Residence
- c. Multi-Units

Residential land is defined as follows:

“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 includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements.

C.R.S. § 39-1-102(14.4)(a).

3. **Commercial Real Property** – This classification includes, but is not limited to, the following subcategories:

- a. Lodging
- b. Offices
- c. Recreation
- d. Warehouse/Storage

4. **Industrial Real Property** - This classification includes, but is not limited to, the following subcategories:

- a. Manufacturing/Processing
- b. Refining/Milling
- c. Contracting/Service

5. **Agricultural Real Property** - This classification includes, but is not limited to, the following subcategories:

- | | |
|-------------------------|------------------------------|
| a. Flood Irrigated Land | d. Forest Land |
| b. Dry Farm Land | e. Farm/Ranch Support Bldgs. |
| c. Grazing Land | f. All other agricultural |

Agricultural land is defined, in pertinent part, as follows:

[W]hether used by the owner of the land or a lessee, [agricultural land] means one of the following:

A parcel of land, whether located in an incorporated or unincorporated area and *regardless of the uses for which such land is zoned*, that was used⁵ ... as a farm or ranch,⁶ as defined in subsections (3.5) and (13.5) of this section “Agricultural land” also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation.

C.R.S. § 39-1-102(1.6) (emphasis added).

In addition, farms and ranches are defined below:

“Farm” means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the *primary purpose of obtaining a monetary profit*.

“Ranch” means a parcel of land which is used for grazing livestock for the *primary purpose of obtaining a monetary profit*. For the purposes of this subsection (13.5), “livestock” means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

C.R.S. § 39-1-102(3.5) and (13.5) (emphasis added).

6. **Natural Resources Real Property** – This classification includes subcategories, but are not listed here for purposes of this discussion.

⁵ NOTE: C.R.S. § 39-1-102(1.6) sets forth specific requirements regarding the required time such property must be used as a farm or ranch to qualify for classification as agricultural land depending on whether water rights exist or the length of time such property is used for agricultural purposes over a ten-year period.

⁶ Agricultural land may also be defined as parcels of forest land or land subject to perpetual conservation easements, if they meet the additional requirements set forth in C.R.S. § 39-1-102(1.6).

Memo re: Classification of Property for Tax Assessment Purposes

Page 5 of 6

7. **Producing Mines Real Property** – This classification includes subcategories, but are not listed here for purposes of this discussion.
8. **Oil and Gas Real Property** – This classification includes subcategories, but are not listed here for purposes of this discussion.
9. **Exempt Real Property** – This classification includes subcategories including, but not limited to, properties used for religious or charitable purposes, private schools, property owned or leased by governmental agencies and political subdivisions.
10. **State Assessed Property** – The County does not assess such parcels.

Property Valuation and Taxation: Once classified, most properties are valued using the three approaches to value: the market approach, the cost approach, and the income approach. C.R.S. § 39-1-103(5)(a) The exceptions to the three approaches *include*:

- Residential real property (must be valued based on the market approach only);
- Agricultural *land*, exclusive of building improvements (property value is based on a modified income approach that uses a statutory capitalization rate); and
- Natural resource land (special valuation procedures based on productivity and production).

Property taxes are not calculated on the “full actual value” of the property under the approaches described above. Instead, an assessment percentage is applied according to the *classification* of the property. C.R.S. §§ 39-1-104(1)-(1.5).

- Currently, residential real property is assessed at 7.20% of actual value – adjusted biennially - while most other real property is assessed at 29%.⁷

Sub-classification of Vacant Land:⁸ As stated above, vacant land may be sub-classified (and valued) based on its designation as a residential, commercial or industrial lot or as unplatted vacant land classified by size (or other subclass such as a PUD or minor structure).⁹

⁷ The exceptions are producing mines and producing oil and gas leaseholds. Articles 6 and 7 of title 39 of the Colorado Revised Statutes.

⁸ NOTE: All types of vacant land – commercial, industrial or residential – is assessed at 29%.

⁹ Land or site improvements such as sewer, water, electricity, curb and gutter and street paving may exist on vacant land subclassified as residential, commercial, industrial, or PUD. These site improvements will most likely not exist on vacant parcels classified by size only. *2 Assessors' Reference Library* §6, at 6.19-6.20.

Memo re: Classification of Property for Tax Assessment Purposes

Page 6 of 6

Below are some of the considerations an assessor looks at to determine how to sub-classify and value vacant land:

- The existence, if any, of a plat
 - Ex. A platted residential subdivision
- Zoning
 - Ex. Platted lots that are zoned commercial or industrial are assigned to the appropriate subclass
- Use
 - Ex. Use of parcel as a pay-parking lot would lead to classification as a vacant commercial lot

Thus, when determining the fair market value of *vacant* land, assessors may consider the “reasonable” future use of the property based on many factors, including zoning and approved densities. *Colorado Arlberg Club*, 762 P.2d at 151-52 (normal uses potential buyer could use property for must be considered as part of determining market value). “For example, a tract of undeveloped land with potential for development has a higher present fair market value than the same size tract of undeveloped land with no such potential, *i.e.*, even in its undeveloped state, a willing buyer and a willing seller would agree on a higher price for it.” *Id.* at 152.