BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **JAMES C. TANNER ET AL.,** v. Respondent: **SAN MIGUEL COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 45054**
ORDER	

THIS MATTER was decided by the Board of Assessment Appeals on the written submissions of the parties, with Karen E. Hart and Lyle Hansen presiding. Petitioner is represented by Jeffrey R. Bergstrom, Esq. Respondent is represented by Steven J. Zwick, Esq. and Kevin J. Geiger, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2005.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Unit 7, The Knoll Estates Lot 1, Telluride Mountain Village Filing 13
San Miguel County Schedule Number R1080090107

The subject property consists of a .099-acre parcel of vacant land located in the Town of Mountain Village, Colorado.

At issue is whether the subject property qualifies as residential land under C.R.S. § 39-1-102(14.4). More specifically, the parties agree that the issue for determination by this Board is whether the 24-foot wide strip of land between and separating two residential lots (Lots K-6 and K-7) defeats the requisite contiguity needed under C.R.S. § 39-1-102(14.4) for an otherwise vacant parcel of land to be classified as residential land.

FINDINGS OF FACT:

1. The Petitioner purchased Lot K-7 in July 2003. At the time Petitioner purchased Lot K-7, it was classified as vacant land.

2. The Petitioner owns another parcel of land (Lot K-6) in the Knoll Estates subdivision. There are residential improvements on Lot K-6.

3. A 24-foot wide strip of land exists between Lots K-6 and K-7 and is considered a "General Common Element" pursuant to the Knoll Estates Plat. According to the Knoll Estates Declaration, use and enjoyment of the General Common Elements is not exclusive to a property owner, but is shared with all Knoll Estates property owners, their families and guests.

4. Each owner of a Lot is responsible for landscaping any General Common Element appurtenant to their Lot to a point halfway to the next Lot. As such, Petitioner is responsible for landscaping the entire 24-foot wide strip of land separating Lots K-6 and K-7 as a result of his ownership of Lots K-6 and K-7.

5. For tax year 2005, the San Miguel County Assessor classified Lot K-7 as vacant. Petitioner protested the vacant land classification, requesting that Lot K-7 be reclassified as residential.

6. The San Miguel County Assessor denied Petitioner's protest. The San Miguel County Board of Equalization subsequently denied Petitioner's protest. Thereafter, Petitioner timely appealed to the Board of Assessment Appeals.

7. The parties have stipulated that the actual value of Lot K-7 is $400,000, regardless of the subject property's classification.

CONCLUSIONS OF LAW:

Pursuant to Colorado Constitution, Article X, section 3(1)(b), residential real property, including "all residential dwelling units and the land, as defined by law, on which such units are located," is assessed at a lower rate than other classifications of property. By statute, Colorado defines "residential real property" as "residential land and residential improvements."

"Residential land" is defined as:

> [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. The term does not include any portion of the land that is used for any purpose that would cause the land to be

otherwise classified . . . The term also does not include land underlying a residential improvement located on agricultural land.

C.R.S. § 39-1-102(14.4). "Residential improvements" is defined to mean "a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families." C.R.S. § 39-1-102(14.3). The term includes buildings, structures, fixtures, fences, amenities, and water rights which are an integral part of the residential use. *Id.*

The key issue in this case is whether Lots K-6 and K-7 are "contiguous" under C.R.S. § 39-1-102(14.4). There is a rebuttable presumption that the classification made by a county assessor is correct. *Gyurman v. Weld County Board of Equalization*, 851 P.2d 307, 310 (Colo.App. 1993).

The Board finds that the parcels are not contiguous. Petitioner does not own the 24-foot wide strip of land separating Lots K-6 and K-7. *Compare with Sullivan v. Board of Equalization of Denver County,* 971 P.2d 675 (Colo.App.1998) (holding that a vacant parcel of land located adjacent to another parcel of land that contains the taxpayer's residence did not receive a residential classification because the vacant lot was owned in the taxpayer's wife's name and therefore, there was no common ownership.)

Although Petitioner may indeed use the 24-foot wide strip of land in conjunction with his use of Lots K-6 and K-7, Petitioner does not have exclusive control over the 24-foot wide strip of land. Pursuant to the Knolls Estate Plat and Declaration, the 24-foot wide strip of land is a "General Common Element," shared by all Knoll Estates property owners, their families and guests. Petitioner could not prevent other homeowners from using the 24-foot wide strip of land.

The fact that Petitioner is responsible for landscaping the 24-foot wide strip of land is not persuasive. Every Lot owner is under the same responsibility for the common areas adjoining their property. The fact that Petitioner owns land on both sides of the 24-foot wide strip of land does not somehow give Petitioner greater ownership of the 24-foot wide strip of land than every other landowner in Petitioner's development.

For the foregoing reasons, the petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 21st day of June 2006.

BOARD OF ASSESSMENT APPEALS

Lyle Hansen

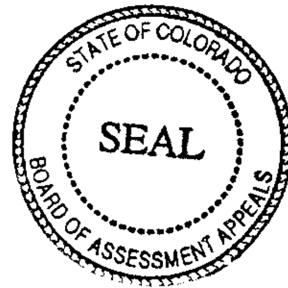
Karen E. Hart

This decision was put on the record

JUN 2 1 2006

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal



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