BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **PHILIP L. HAYWARD,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 49009**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 4, 2008, James R. Meurer, Karen E. Hart, and Lyle D. Hansen presiding. Petitioner appeared pro se. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2007 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

> **Lots 1 through 5, Block 3 of Perry Park 7, Larkspur, Colorado (Douglas County Schedule Nos. R0012941, R0016934, R0013768, R0016301, & R0017734)**

The subject property consists of five platted single-family residential lots located in Block 3 of the Perry Park 7 Subdivision. Lot 1 contains a total of 0.898 acres more or less; Lot 2 contains a total of 1.039 acres more or less; Lot 3 contains a total of 1.081 acres more or less; Lot 4 contains a total of 1.154 acres more or less; and Lot 5 contains a total of 1.030 acres more or less.

The five platted residential lots are a part of a larger residential subdivision referred to as Perry Park. This residential subdivision is situated approximately 15 miles southwest of the town of Castle Rock. The Perry Park Golf Course is a part of the subdivision. The typical lot size in the subdivision is 0.9 acres.

Petitioner does not dispute the actual value for the subject property as assigned by Respondent at $68,500.00 per lot. Petitioner disputes the land classification of the five platted residential lots as "vacant land." Petitioner is requesting the land classification be changed to "residential land."

The five platted lots are contiguous and clustered around a public right-of-way cul-de-sac referred to as Apache Court. The lots are unimproved except for a single-strand non-barbed wire that is strung around a portion of the perimeter of the lots. Each lot has landscaping consisting of native grass, scrub oak bushes, and some trees. Each lot has various configurations of red rock formations. Portions of each lot have topography that could accommodate a single-family residence. Other than the single-strand non-barbed wire fence, there are no other residential buildings or miscellaneous improvements to the five platted lots.

Petitioner resides in a single-family residence at 6619 Apache Place. This residence is situated on a residential lot that is contiguous to Lot 2.

Apache Drive provides public access to both Apache Place and Apache Court. Apache Drive is a paved two-lane street with the paving extending past Apache Place and ending at Lot 1. Apache Drive then becomes an unimproved public access right-of-way extending past Apache Court and coming to a dead end at the southwest corner of Lot 5. Apache Court intersects with Apache Drive at a right angle and extends northward culminating in a cul-de-sac. Apache Court is also an unimproved right-of-way that provides public access to all five lots.

Open space exists to the west and north of the five platted lots.

Petitioner requests "residential land" classification. It is his opinion that the five platted lots are a part of and contiguous to the lot upon which his single-family residence is located. Petitioner describes these five platted lots as "back yard" for his single-family residence. He patrols the lots on a daily basis and uses them for residential recreational purposes. Petitioner testified that he has maintained the oak bushes on the five platted lots.

Respondent contends that the five platted residential lots are properly classified as "vacant land." Respondent inspected the five platted lots to determine the quality of fencing reported by Petitioner and to determine the fencing location. Respondent indicated that the fencing was a single strand of non-barbed wire loosely installed in various areas along the perimeter of the five platted lots. Respondent testified that no other improvements of any kind had been constructed on the five lots.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified as vacant land for tax year 2007.

The Board reviewed the definitions for "residential land" and "residential improvements" C.R.S. section 39-1-102(14.4) defines "residential land" 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." According to C.R.S. section 39-1-102(14.3) the definition of "residential improvements" includes "buildings,

structures, fixtures, fences, amenities, and water rights which are an integral part of the residential use." Land may be classified residential "by having residential improvements other than a dwelling unit and being used as a unit in conjunction with a residential dwelling unit located on a contiguous parcel that is under common ownership with the subject parcel." *Sullivan v. Board of Equalization*, 971 P.2d 675, 676 (Colo.App. 1998).

The Board concludes that the "fence" described on the five platted lots does not meet the definition of a "residential improvement." As described by Respondent, the "fence" is a single strand of non-barbed wire that is loosely placed on portions of the perimeter of the five platted lots. Respondent testified that in most locations, the wire was approximately eighteen inches to two feet off the ground. The Board concluded that this placement of the wire was not permanent in its installation since the wire could be removed easily and at minimal cost. A single strand of wire is not comparable to a more typical multi-strand wire, wood, or steel-framed fence. The single strand of wire was almost impossible to detect when inspected by Respondent.

The Board determined that the subject property does not meet the criteria for residential classification as set forth in *Sullivan v. Board of Equalization*. The five platted lots have no residential improvements, and do not appear to be associated with the adjacent improved single-family residential lot when viewed from the street; they appear to be vacant platted lots.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Colorado Revised Statutes ("CRS") section 24-4-106(11)(commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered). Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 7th day of May 2008.

BOARD OF ASSESSMENT APPEALS

James R. Meurer

Karen E. Hart

Karen E. Hart

Lyle D. Hansen

This decision was put on the record

MAY 07 2008

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

Heather Heinlein

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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