BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioners: **GALENA PARTNERS, & KENSINGTON PARTNERS,** v. Respondent: **EAGLE COUNTY BOARD OF COMMISSIONERS.**	
Attorney or Party Without Attorney for the Petitioners: Name: William A. McLain, Esq. Address: 3962 South Olive Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0087 E-mail: Attorney Reg. No.: 6941	**Docket Numbers: 36977, 36978, 36979, 36980, 36981, 36982**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on April 26, 2001, Debra A. Baumbach, Karen E. Hart, and J. Russell Shaw presiding. Petitioners were represented by William A. McLain, Esq. Respondent was represented by Reneé Allee Black, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

> **SECT/TWN/RNG 1305083 PTS OF LOTS 1, 4, 7, 9, 13, 14, & 15 LOTS 2 & 12; SECT/TWN/RNG 12-5-83 LOTS 1, 8-12, 21-23, SECT/TWN/RNG 13-5-83 LOT 3 (Eagle County Schedule Nos. R039178, R028369, R047839)**

Petitioners are requesting an abatement/refund of taxes on the subject properties for

applicable tax years as follows:

Parcel	1997	1998	1999
R039178	$37,378.44	$38,737.62	$47,378.18
R028369 or	$32,471.31	N/A	N/A
R047839	N/A	$30,703.73	$35,097.99
Total	$69,849.75	$69,441.35	$82,476.17

The subject properties consist of a two-parcel tract of undeveloped land. In 1997 the total acreage for both parcels is 480.688 acres. After a split off of acreage in the northwest corner of the tract, the resulting aggregate acreage for 1998 and 1999 is 447.747 acres. The properties are located within the Cordillera development with a postal address of Edwards, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the value of the property is negatively impacted by the existence of setback restrictions, visual restrictions, naturally occurring wildlife corridors, and dedicated open space requirements. The value is also affected by density allocations in place as a result of the PUD Declaration, Resolutions and Amendments. The Petitioners also contend that, in as much as the two ownerships are related parties, the values established as a result of this hearing should be allocated evenly between the two entities.

Respondent:

Respondent contends that the value established for the tax years in question are based upon the actual use as of each assessment date as well as any and all recorded restrictions on the properties, including those regarding density, setback and visual impact, as well as wildlife and open space corridors.

FINDINGS OF FACT:

1. This is a consolidation of Docket Nos. 36977, 36978, 36979, 36980, 36981, and 36982 involving two real property parcels owned by related parties. Together, the two parcels make up Planning Parcel "O" of the recorded Planned Urban Development Declaration. The Galena Partners' parcel is identified on the Eagle County records as R039178. The Kensington Partners' parcel is identified by Eagle County as R028369 for 1997 and as R047839 for 1998 and 1999.

2. Petitioners' witness, Mr. Tom McElhinney, Agent with TPS Companies, Inc, presented the following values, based on the market approach:

1997	1998	1999
$3,696,550.00	$3,696,550.00	$5,635,570.00

3. Petitioners requested that the values be allocated evenly between the two related ownership parties. Based on this request, the resulting valuations would be allocated as follows:

Parcel	1997	1998	1999
R039178	$1,848,275.00	$1,848,275.00	$2,871,785.00
R028369 or	$1,848,275.00		
R047839	N/A	$1,848,275.00	$2,871,785.00
Total	$3,696,550.00	$3,696,550.00	$5,635,570.00

4. Petitioners' witness presented 50 comparable sales ranging in sales price from $150,000.00 to $19,000,000.00 and in size from 53 acres to 5,500 acres. No adjustments were made to any of the sales.

5. Mr. McElhinney testified that the acreage difference between 1997 and 1998 occurred when approximately 30 acres was removed from the Planning Parcel "O" and converted to residential development.

6. As part of his testimony, Mr. McElhinney introduced a three-dimensional model of the property subject to this hearing. A black and white photo of the model is contained within Petitioner's Exhibit A. The model is color coded to indicate the location of specific areas whose use is precluded from development by setback and visual restrictions as well as from open space and wildlife corridor dedications.

7. Petitioners' witness indicated that his clients have no issue with the values established by the Respondent for the developable portion of the property. Those values are $15,500.00 per acre for 1997/1998 and $17,500.00 per acre for 1999. Their primary concern is with the value of approximately 220 acres or roughly 50% of the total area that is impacted by restrictions to development. He believed that the most practical method with which to value the restricted areas would be to apply the same values placed on other open space properties located within Eagle County. Based on his review of the Eagle County Assessor records, he testified that similarly restricted parcels were being valued at $3,500.00 per acre for 1997/1998 and $7,500.00 per acre for 1999.

8. According to Mr. McElhinney, only 36 home sites were authorized by the original Resolution and 12 of those were lost as a result of the 1997 split. He also testified that some density rights had been moved to other parcels to allow for increased development in those areas. Consequently, he contends that the remaining density requirements will only allow 4 home sites to be developed on the restricted property.

9. He also advised that even though the early version of the site plan, which is included in Respondent's Exhibit 6, seemed to indicate the existence of two wildlife corridors, no information has been provided by his clients to indicate that more than one corridor remains in the plan.

10. With respect to the possible valuation of the remaining home sites, the witness testified that recent sales of 2-acre home sites within El Mirador Filing #2, an adjacent development within Cordillera, seemed to indicate a value of approximately $388,600.00 per lot.

11. Under cross-examination, Mr. McElhinney admitted that the areas identified as being dedicated open space and wildlife corridors had not yet been deeded as such.

12. Petitioners are requesting actual values for the subject properties as follows:

Parcel	1997	1998	1999
R039178	$1,848,275.00	$1,848,275.00	$2,871,785.00
R028369 or	$1,848,275.00	N/A	N/A
R047839	N/A	$1,848,275.00	$2,871,785.00
Total	$3,696,550.00	$3,696,550.00	$5,635,570.00

13. Respondent's witness, Mr. Ed Smith, a Certified General Appraiser for the Eagle County Assessor's Office, presented the following indicators of value, based on the market approach:

	1997	1998	1999
R039178	$3,305,250.00	$3,305,250.00	$4,501,320.00
R028369 or	$2,871,590.00	N/A	N/A
R047839	N/A	$2,619,770.00	$3,334,260.00
	$6,176,840.00	$5,925,020.00	$7,835,580.00

14. Respondent's witness testified that he considered the parcels individually in developing his sales comparable analysis for the tax year 1997. In Respondent's Exhibit 1, for parcel R028369, Respondent's witness provided 3 comparable sales ranging in sales price from $2,317,000.00 to $4,400,000.00 and in size from 194.77 acres to 375 acres. After adjustments were made, the sales ranged from $3,536,480.00 to $4,159,720.00 or $11,093.00 to $20,186.00 per acre.

15. In Respondent's Exhibit 3, for Parcel R039178, Respondent's witness utilized the same 3 comparable sales. However, due to the size differential between the two parcels, the adjusted sales ranged in price from $3,114,620.00 to $3,737,870.00 or $9,968.00 to $18,021.00 per acre.

16. As demonstrated in Respondent's Exhibit 5, for tax year 1998, Parcel R028369 had been renumbered as R047839 due to the removal of land from that section of Planning Parcel "O." In developing his market approach valuation, Respondent's witness utilized the same three sales comparables as he used in his analysis for tax year 1997, made adjustments for the smaller size of the subject parcel, and calculated adjusted sales prices ranging from $2,702,860.00 to $3,326,110.00 or $8,778.00 to $15,906.00 per acre.

17. As there was no change in the physical attributes of Parcel R039178 during the intervening year, the 1998 adjusted sales prices in Respondent's Exhibit 3 analysis remained consistent with the adjusted sales prices for tax year 1997.

18. For tax year 1999, Respondent's witness provided three comparable sales in Exhibit 4 ranging in sales price from $3,332,000.00 to $3,475,000 and in size from 109 acres to 415.475 acres. With respect to Parcel R047839, after adjustments, the sales prices ranged from $3,008,690.00 to $6,485,990.00 or $9,771.00 to $59,505.00 per acre. For Parcel R039178 in Exhibit 2**,** and due once again to the size differentials in the parcels, analysis of these same comparables resulted in adjusted sales prices of $4,142,410.00 to $7,619,710.00 or $16,672.00 to $69,906.00 per acre.

19. Mr. Smith testified that the primary issue does not appear to be in regards to valuation of the developable parcels, but concerns treatment of property that the Petitioners claim is restricted from development. The Respondent has classified all of the acreage within Planning Parcel "O" as vacant land for each of the three tax years in question. Additionally, Respondent's valuation does not recognize the existence of any "Open Space" or "Wildlife Corridor" designations within the subject parcels. Mr. Smith provided Respondent's Rebuttal Exhibit 6, which included what was identified as relevant portions of the Cordillera II PUD Guide, Declaration of Protective Covenants, Conditions and Restrictions for Cordillera as well as sections of Board of County Commissioner Resolutions concerning development of the subject parcels. The exhibit also included sections from the Division of Property Tax Guidelines related to the determination of "Actual Use."

20. Mr. Smith pointed out that the terms of the Fourth Amendment, Resolution 98-127 shown on page 8 of Exhibit 6 indicates that the actual building site density assigned to the combined parcels does not appear to have changed. Furthermore, because no revised plats have been recorded, he believes the Petitioners' claim that only 4 building sites remain is irrelevant to the tax years in question.

21. With respect to the "open space and wildlife corridor" issue, Mr. Smith testified that Cordillera's own regulations, as shown on page 22, item (dd) of Exhibit 6, support his contention that open space consideration should only be given to parcels within the development when they are officially recorded as such. He advised that it has been the practice of his office to recognize and act on recorded open space designations within the Cordillera development. He contends that at the time of the tax years under appeal, no such designations had been filed on acreage within the subject parcels.

22. Mr. Smith also testified that, as shown on page 23 of Exhibit 6, Colorado Revised Statutes 39-1-103(5) supports his position regarding classification of the subject properties as vacant land for the tax years subject to this appeal. Based on historical use within the scope of the Cordillera PUD, the entire parcel has been classified as vacant land consistent with Division of Property Taxation Guidelines. He asserted that because no change in use had occurred relevant to the tax years in question, no classification other than vacant land was relevant.

23. Respondent assigned actual values to the subject properties as follows:

Parcel	1997	1998	1999
R039178	$3,305,250.00	$3,305,250.00	$4,501,320.00
R028369 or	$2,871,590.00	N/A	N/A
R047839	N/A	$2,619,770.00	$3,334,260.00

CONCLUSIONS:

1. Respondent presented sufficient probative evidence to prove that the tax year 1997 and 1998 valuations were correct.

2. Petitioners presented sufficient probative evidence and testimony to prove that the tax year 1999 valuation of the subject properties was incorrect.

3. This Board finds that the Respondent has acted correctly and within the scope of its authority in classifying all of the land subject to this appeal as vacant land for the tax years in question. Pursuant to the language noted in 39-1-103(5) and testimony by both parties, with the exception of the land split from the original parcel R028369, which was placed into development during 1997, the actual use of the properties did not change during the periods in question.

4. Although preliminary and conceptual site plans provided by both parties indicate the intention of the developer to assign certain areas as open space and/or wildlife corridors, testimony from both witnesses demonstrated that no open space or wildlife corridors had been recorded at points in time relative to the periods covered within this appeal. Consequently, the Board further agrees with Respondent that until such documents setting aside specifically designated acreages for these uses have been recorded**,** no consideration can be given these proposed uses in the valuation of the subject properties.

5. With respect to the issue of valuation, the Board's analysis of the comparable sales offered by the Respondent for the individual parcels and periods in question indicates valuations that consider the specific nature of the subject parcels in terms of ownership, size and tax year. It is important to note that the only comparable sale consistent throughout each of the Respondent's analyses is for a parcel identified as the "Planning Parcel "P" or Beardon parcel," a 307.9 acre parcel located within the Cordillera PUD. The comments section within each of the Respondent's appraisals indicates that this sale is the most comparable to the subjects in terms of relative size and condition. The adjusted sale prices for this parcel range from $10,116.00 to $11,458.00 per acre in 1997, $8,778.00 to $11,485.00 per acre in 1998 and $9,771.00 to $13,453.00 per acre for 1999.

6. The Board is drawn to this sale. Its existence within each of the applicable ownerships and tax years indicates to the Board that it is likely the most reliable comparable with which to establish a value for the subjects. As noted above, the range of values per acre indicated by adjusting this sale in comparison to the subject, varies widely depending on the year and subject parcel in question. The 1997 range is $10,116.00 to $11,485.00 per acre. The range for 1998 is $8,778.00 to $11,485.00 per acre. The range for 1999 is $8,778.00 to $9,771.00 per acre. Irrespective of the wide range of adjusted sales prices that resulted from the individual adjustments, we believe this sale to be a good value indicator, in terms of size, location and physical attributes.

7. In its analysis of this sale, the Board considered the subject parcels to be a single tract, irrespective of the individual ownerships. In 1997 that combination of parcels would result in a total acreage for purpose of comparison of 480.688 acres. For 1998 and 1999 the total acreage of the subject is 447.747 acres. Sales provided by both parties demonstrate no consistent pattern with respect to the impact of acreage on sales price. Consequently, we have eliminated the size adjustment from our analysis. The Board believes the primary adjustments should be for location and for time. However, as Planning Parcel "P" is located within the Cordillera development, we made no locational adjustment to this comparable.

8. Respondent's time adjusted sales prices indicated the value for 1997 should be $13,544.00 per acre, which exceeds the value assigned by the Respondent to either parcel for that tax year. Therefore, the Board affirms Respondent's 1997 assigned value.

9. The transfer of land out of Parcel R028369 resulted in the creation of a smaller parcel R047839 for the 1998 intervening tax year. Applying the Respondent's valuation model to this smaller parcel resulted in an assigned value based on $13,750.00 per acre. Although this 1998 value per acre is slightly higher than the Respondent's 1997 assigned value for the former parcel, we affirm the methodology used to develop this value. We affirm Respondent's 1998 assigned value for this parcel.

10. With respect to 1999, we believe an adjustment is indicated. The Respondent has assigned a value of $17,500.00 per acre to both subject parcels. Our analysis based on time adjusted sales prices indicates a value per acre of $16,250.00.

11. The Board concluded the 1999 values should be reduced as follows:

Parcel	Value
R039178 (Docket No. 36979)	$4,179,792.00
R047839 (Docket No. 36981)	$3,096,096.00

ORDER:

1. The petitions requesting an abatement/refund for tax years 1997 and 1998 (Docket Nos. 36977, 36978, 36980, and 36982) are denied.

2. Respondent is ordered to cause an abatement/refund to Petitioners, based on a 1999 actual value for the subject properties as follows:

Parcel	Value
R039178 (Docket No. 36979)	$4,179,792.00
R047839 (Docket No. 36981)	$3,096,096.00

The Eagle County Assessor is directed to change her records accordingly.

APPEAL:

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

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 8th day of June, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Karen E. Hart

J. Russell Shaw

This decision was put on the record

JUN 08 2001

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

Diane Von Dollen

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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