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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CUB CREEK RANCH LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p> | <p>Docket No.: 50241</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on November 13, 2008, James R. Meurer and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Robert H. Dodd, 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:

**Cub Creek Ranch Subdivision, Evergreen, Colorado
Jefferson County Schedule Nos. 441452 to 441486
Property Tax Administrator File No. 30-08-022**

The subject property includes 35 vacant residential parcels ranging in size from 3.69 to 8.02 acres, with a total 165.29 acres. The lots have roads and electrical to each site and will be serviced with well and septic.

Petitioner filed for an abatement/refund for tax year 2005 with the Jefferson County Board of Commissioners. A Jefferson County Hearing Officer found that Petitioner’s evidence of value was reasonable and the Board of Commissioners granted their petition for abatement. The abatement petition was subsequently denied by Respondent.

Petitioner presented six comparable sales ranging in sales price from \$85,000.00 to \$245,800.00 and in size from 2.170 to 7.610 acres. After adjustments were made, the sales ranged

from \$98,600.00 to \$269,400.00. Petitioner concluded to a total retail value of \$5,382,103.00 for the 165.29 acres. Petitioner applied present value discounting and concluded to a discounted value of \$3,284,459.00 or \$93,842.00 per lot.

Respondent contends that the Jefferson County Assessor correctly valued the subject based on six lot sales, the same sales used by Petitioner, ranging in size from 2.17 to 7.61 acres, but without present value discounting. Respondent stated in their denial that “According to the Jefferson County Assessor’s Office, the values for 2005 were based on raw land sales; thus, present worth discounting was not applied.” According to the Assessor’s Reference Library (ARL), Volume 3, page 4.6, the unadjusted selling price used in calculating present worth discounting should not fall below the most comparable current raw land sales.

Petitioner contends that the six comparable sales relied on by both parties are comparable to the individual lots of the subject property, and should be used to determine value before present worth discounting. These sales, however, are not comparable to the subject property in bulk, and therefore cannot be used to determine the raw land value threshold for the subject.

The Board finds that the six comparable sales presented do not represent a “raw land” value for the subject property. According to ARL Volume 3, page 4.10, “Vacant land present worth actual value must never drop below the actual value of the most comparable raw, undeveloped vacant land as of the appropriate level of value.” Page 4.14 states:

Raw undeveloped vacant land value is the value of the tract before subdividing, adjusted to the current level of value. To determine the appropriate raw land value, comparability of sales is essential. The Assessor attempts to find sales of similar size and development status. . . . Large variances in size typically indicate a different development potential and that the properties are not directly competitive.

The Colorado Court of Appeals in *Resolution Trust Corp. v. Board of County Commissioners*, 904 P.2d 1363 (Colo.App. 1995), addressed the use of present worth discounting:

If valuation is based upon sales of comparable vacant land in bulk without division into lots—typically from one potential developer to another—the sales prices are already discounted to reflect the estimated time and costs of development and marketing.

On the other hand, if the valuation is based upon the sales of individual lots which are comparable to those within the vacant land, as it was here, the costs of developing and marketing the lots are reflected by the adjusted retail price arrived at through the present worth discounting process.

Thus, an assessor may rely solely on comparable sales data only when the valuation is based upon comparable sales of vacant land in bulk.

904 P.2d at 1365 (*citations omitted*).

The Board is convinced that the six sales used by both Petitioner and the Assessor's Office were comparable to the individual lots associated with the subject. All had roads and offered similar single family building sites as the subject. The Assessor's Office and Respondent erred when comparing the six sales ranging in size from 2.17 to 7.61 acres with the subject in bulk, at 165.29 acres. Consequently, Respondent incorrectly relied on the six sales in setting the raw land threshold of value for the subject. Therefore, the Board agrees with Petitioner that present worth discounting should be applied to the six sales to determine the 2005 actual value of the subject property.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2005 valuation of the subject property was incorrect.

The Board concludes that the 2005 actual value of each of the subject lots should be reduced to \$93,732.00, as concluded by the Jefferson County Hearing Officer on January 16, 2008.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2005 actual value for each of the subject lots of \$93,732.00.

The Jefferson County Assessor is directed to change his records accordingly.

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 CRS § 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).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 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).

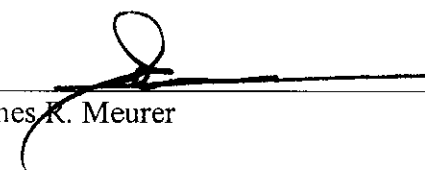
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

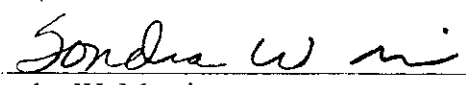
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

DATED and MAILED this 24th day of December 2008.

BOARD OF ASSESSMENT APPEALS


James R. Meurer


Sondra W. Mercier

This decision was put on the record

DEC 23 2008

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


Heather Flannery

