

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RIVER CANYON REAL ESTATE INVESTMENTS LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 51485</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 7, 2009, Louesa Maricle and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**75 Vacant Residential Lots located in River Canyon Subdivision,
Filings 1A and 1B, Unincorporated Douglas County, Colorado
(Douglas County Schedule Nos.: See Addendum)**

The subject includes 75 vacant single family lots that were fully developed as of the date of value. The lots vary in location and size and are categorized by both parties as larger interior, larger greenbelt, larger golf course, smaller interior, smaller greenbelt and smaller golf course lots.

Both parties relied on the sales comparison approach to determine retail lot values. Petitioner concluded that Respondent's individual retail lot values were reasonable; and with a slight variation in the smaller interior base lot value, relied upon the same indicated value.

Both parties determined that the subject lots were eligible for present worth discounting as described in the Colorado Division of Property Taxation (DPT) *Assessor's Reference Library* (ARL), volume 3 "Land Valuation Manual," chapter 4 "Valuation of Vacant Land Present Worth."

Petitioner first made a deduction of \$81,090.00 from each lot for remaining development costs. Petitioner contends that there are remaining development costs of \$747,000.00 or \$3,075.00 per lot for completion of street lights, parks, community trails and other miscellaneous items required as part of the county's approval of the PD. Petitioner further contends that the cost of completion of the golf clubhouse, fitness center, tennis courts, half-way house, casting club and maintenance building must be deducted, in an amount of \$18,957,819.00 equal to \$78,015.00 per lot. Petitioner contends that buyers purchased these lots with the understanding that these items would be built as part of the development. At the time of closing, lot buyers were required to simultaneously pay a deposit to secure a club membership. Petitioner's witness, Mr. Glen Jacks, testified that none of the funds generated by club membership would be used in the construction or ongoing maintenance of the club and members would be charged additional monthly dues for operations upon completion of the club. The club would remain under the ownership of the developer.

Petitioner analyzed ten developments presented as comparable to the subject in order to determine absorption for the subject. Petitioner concluded to the absorption of 11 lots per year per filing, based on the middle of the range of comparable sales. This resulted in an absorption period of 6 years for Phase 1A lots and 17 years for Phase 1B lots. Petitioner contends that sales within the subject in the period immediately following the base period support this level of absorption.

Petitioner's witness, Mr. Carter D. Morrison, analyzed three investor surveys regarding discount rates for development land. After deducting an allowance for profit, Petitioner concluded to a rate of 15.9% for Phase 1A lots and 17.7% for Phase 1B lots.

Petitioner is requesting 2007 actual values ranging from \$66,638.00 to \$212,015.00 for the 75 subject lots.

Respondent relied on sales data for Castle Pines Village Filing 27A to conclude to absorption of 23 lots per year per filing for the subject. Respondent's witness, Mr. Mike Shafer, contends this rate must be applied to each filing separately. This resulted in a 3-year absorption period for Filing 1A lots and an 8-year absorption period for Filing 1B lots. Respondent contends that the developments relied upon by Petitioner in determination of absorption are not really comparable to the subject. Respondent also applied a test of reasonableness to the conclusion of absorption based on sales within the subject in the period following the base period. Respondent applied a 12.5% discount rate, which is at the upper end of the range developed by the DPT for statewide use for tax years 2007 and 2008.

Respondent made no deduction for remaining development costs. Mr. Shafer testified that the developer is not obligated to build the clubhouse and fitness facility until a membership of 225 is reached; and further, that separate membership fees are required at the time of closing. Respondent contends that those costs are not considered development costs; therefore, they cannot be deducted.

Respondent assigned total actual values ranging from \$176,974.00 to \$394,519.00 to the subject lots for tax year 2007. Respondent is recommending a reduced value for 17 of the subject lots outlined in the Addendum for tax year 2007.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2007 valuation of the subject property was incorrect.

Petitioner provided sufficient evidence and testimony to support absorption of 11 lots per filing per year resulting in an absorption period of 6 years for Phase 1A lots and 17 years for Phase 1B lots. The Board was convinced that Respondent's level of absorption of 23 lots applied to each filing separately overstated absorption and was not reflective of the market based on comparable sales. According to the ARL, "The absorption (sellout) period is the number of years during which vacant lots or tracts are expected to be sold within an approved plat or competitive environment . . ." ARL, vol. 3, pg. 4.17. The ARL defines an approved plat: "1. For subdivided land, the approved subdivision and/or its approved filings and/or its approved development tracts 2. For Planned Unit Developments, the approved plan. An approved plat for subdivided land may include one or all filings within the subdivision." ARL, vol. 3, pg. 4.4. Respondent's witness, Mr. Shafer, testified that he is required to apply the absorption rate to individual filings. The Board concluded that this requirement is not indicated by ARL guidelines. .

Petitioner provided insufficient evidence to support use of a discount rate higher than 12.5%. DPT established a discount rate for Colorado properties for tax years 2007 and 2008 within a range of 10.5% and 12.5%. The ARL allows for a deviation from the DPT's published rate if supportable and documented county or subdivision specific data indicates an adjustment. ARL, vol. 3, p. 4.39. While Petitioner presented numerous surveys suggesting a higher discount rate, none was shown to be specific to Douglas County or the subject subdivision. Petitioner's survey data indicated rates for raw tracts, rates from national developers and rates inclusive of profit. Profit is considered an indirect cost of development not allowed as a deduction under Section 39-1-103(14)(b), C.R.S.; therefore, Petitioner's rates required a complex adjustment.

The Board was convinced that the remaining development costs of \$747,000.00 for street lights, parks, community trails and other miscellaneous items required by the county in approval of the PD should be deducted according to ARL, vol. 3, p. 4.7, as direct development costs. This is equal to a deduction of \$3,075.00 per lot.

Petitioner provided insufficient evidence to show that a deduction of \$18,957,819.00 constituted a direct development cost associated with the remaining lots. Evidence and testimony indicated that the developer was under no obligation to construct the facility until 225 golf club memberships were sold. As of the date of value, that level of membership had not been reached, consequently, the developer was under no obligation to construct the clubhouse improvements.

Petitioner provided no probative evidence that the purchase of the lot included construction of the clubhouse facility or membership to the club. Evidence indicated that lot buyers are required at closing to pay a deposit of \$50,000.00 to \$75,000.00 to secure club membership that could be refunded to the property owner if the lot is sold or at an unspecified distant future date. The actual purchase of a club membership would occur once the clubhouse is built, and a monthly membership

fee would be required. The deposit and fees were in addition to the cost buyers paid for the lot, not a cost included as part of the lot purchase price.

Finally, Petitioner's witness, Mr. Jacks, testified that after completion of the clubhouse, the developer would maintain ownership. The clubhouse is not an amenity that would be under the ownership of a homeowner's association, like the trails and community parks typically included in the cost of development. No testimony or documentation was presented that convincingly indicated that construction of the clubhouse was included in the cost of lot purchase and therefore could be deducted as a cost to the development.

The Board relied on Respondent's indication of retail lot values in the calculation, which Petitioner agreed as being reasonable. The Board concluded that the 2007 actual value of the subject property should be reduced according to the Addendum.

ORDER:

Respondent is ordered to cause a refund/abatement to Petitioner based on a 2007 actual value of the subject property as detailed in the Addendum.

The Douglas County Assessor is directed to change his/her 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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 10th day of May 2010.

BOARD OF ASSESSMENT APPEALS

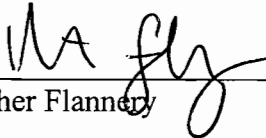


Louesa Maricle



Sondra W. Mercier

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



Heather Flannery



Addendum

				Current County - 2007			Board Revised				
Lot Identification				Respondent's	Respondent's	Retail	Development	Revised	PW	Discount	PW
Account	Ravenna	Legal	Address	Assigned Value	Revised Value	Value	Costs per Lot	Retail	Years	Rate	Value
R0467209	BV-4	Lot 20; 1-A	11191 Beatrice Court	\$ 281,799	\$ 269,886	\$ 340,000	\$ 3,075	\$ 336,925	6	12.5%	\$ 227,640
R0467211	BV-5	Lot 21; 1-A	11161 Beatrice Court	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467213	BV-7	Lot 23; 1-A	11145 Beatrice Court	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467214	BV-8	Lot 24; 1-A	11164 Beatrice Court	\$ 281,799	\$ 269,886	\$ 340,000	\$ 3,075	\$ 336,925	6	12.5%	\$ 227,640
R0467217	BV-9	Lot 34; 1-A	7952 Dante Drive	\$ 281,792		\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467241	CB-29	Lot 176; 1-B	8204 Palladio Court	\$ 264,732		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0467250	UM-18	Lot 60; 1-A	7945 Galileo Way	\$ 322,283	\$ 304,812	\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0467251	UM-19	Lot 61; 1-A	7923 Galileo Way	\$ 322,283	\$ 304,812	\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0467253	UM-21	Lot 63; 1-A	7877 Galileo Way	\$ 322,283	\$ 304,812	\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0467254	UM-22	Lot 64; 1-A	7855 Galileo Way	\$ 322,283	\$ 304,812	\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0467255	UM-23	Lot 65; 1-A	7833 Galileo Way	\$ 322,283	\$ 304,812	\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0467260	BV-13	Lot 30; 1-A	7938 Dante Drive	\$ 394,519	\$ 350,851	\$ 442,000	\$ 3,075	\$ 438,925	6	12.5%	\$ 296,555
R0467261	BV-12	Lot 31; 1-A	11180 Bramante Lane	\$ 281,799	\$ 269,886	\$ 340,000	\$ 3,075	\$ 336,925	6	12.5%	\$ 227,640
R0467270	BV-11	Lot 32; 1-A	11181 Bramante Lane	\$ 281,799		\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467271	BV-10	Lot 33; 1-A	7948 Dante Drive	\$ 281,792		\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467272	AR-15	Lot 35; 1-A	7945 Dante Drive	\$ 394,519	\$ 350,851	\$ 442,000	\$ 3,075	\$ 438,925	6	12.5%	\$ 296,555
R0467273	AR-16	Lot 36; 1-A	7935 Dante Drive	\$ 394,519	\$ 350,851	\$ 442,000	\$ 3,075	\$ 438,925	6	12.5%	\$ 296,555
R0467276	MI-3	Lot 39; 1-A	7857 Dante Drive	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467277	MI-4	Lot 40; 1-A	7843 Dante Drive	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467278	MI-5	Lot 41; 1-A	7829 Dante Drive	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0467279	MI-6	Lot 42; 1-A	7815 Dante Drive	\$ 324,069	\$ 310,369	\$ 391,000	\$ 3,075	\$ 387,925	6	12.5%	\$ 262,098
R0470284	CB-34	Lot 155; 1-B	8199 Galileo Way	\$ 249,137		\$ 391,000	\$ 3,075	\$ 387,925	17	12.5%	\$ 157,904
R0470289	CB-46	Lot 143; 1-B	8063 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470290	CB-45	Lot 144; 1-B	8079 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470291	CB-44	Lot 145; 1-B	8095 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470292	CB-43	Lot 146; 1-B	8111 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470293	CB-42	Lot 147; 1-B	8131 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470294	CB-41	Lot 148; 1-B	8161 Galileo Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470295	CB-40	Lot 149; 1-B	8173 Galileo Court	\$ 203,520		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0470296	CB-33	Lot 156; 1-B	8193 Palladio Court	\$ 203,520		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0470297	BV-2	Lot 96; 1-B	8200 Dante Drive	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470298	CB-39*	Lot 150; 1-B	8195 Galileo Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470299	CB-36	Lot 153; 1-B	8168 Galileo Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470300	CB-35	Lot 154; 1-B	8177 Galileo Way	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470301	AR-6	Lot 107; 1-B	8196 Donatello Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470302	TE-13	Lot 2; 1-B	8190 Donatello Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470303	ES-53	Lot 13; 1-A	8223 Raphael Lane	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	6	12.5%	\$ 257,368
R0470304	CB-64	Lot 158; 1-B	8178 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470305	CB-63	Lot 159; 1-B	8132 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470306	CB-62	Lot 160; 1-B	8102 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093

Addendum

Lot Identification				Current County - 2007			Board Revised				
Account	Ravenna	Legal	Address	Respondent's Assigned Value	Respondent's Revised Value	Retail Value	Development Costs per Lot	Revised Retail	PW Years	Discount Rate	PW Value
R0470307	CB-61	Lot 161; 1-B	8088 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470308	CB-60	Lot 162; 1-B	8070 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470309	CB-59	Lot 163; 1-B	8056 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470310	CB-58	Lot 164; 1-B	8040 Galileo Way	\$ 176,974		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470318			8100 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470319	CB-26	Lot 173; 1-B	8130 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470320	CB-27	Lot 174; 1-B	8160 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470321	CB-28	Lot 175; 1-B	8182 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470322	CB-38	Lot 151; 1-B	8200 Galileo Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470323	CB-32	Lot 157; 1-B	8225 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470324	CB-30	Lot 177; 1-B	8228 Palladio Court	\$ 247,764		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470325	AR-2	Lot 103; 1-B	8066 Paradiso Court	\$ 216,641		\$ 384,000	\$ 3,075	\$ 380,925	17	12.5%	\$ 155,055
R0470327	AR-4	Lot 105; 1-B	8152 Paradiso Court	\$ 216,641		\$ 295,653	\$ 3,075	\$ 292,578	17	12.5%	\$ 119,093
R0470329	CB-37	Lot 152; 1-B	8196 Galileo Court	\$ 249,137		\$ 391,000	\$ 3,075	\$ 387,925	17	12.5%	\$ 157,904
R0470330	AR-7	Lot 108; 1-B	8189 Paradiso Court	\$ 249,137		\$ 391,000	\$ 3,075	\$ 387,925	17	12.5%	\$ 157,904
R0470331	AR-8	Lot 109; 1-B	8153 Paradiso Court	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470334	AR-11	Lot 112; 1-B	8091 Paradiso Court	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470337	AR-14	Lot 115; 1-B	8069 Paradiso Court	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470338	AR-1	Lot 116; 1-B	8061 Paradiso Court	\$ 216,641		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470342	CB-31	Lot 178; 1-B	8250 Palladio Court	\$ 176,974		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0470367	ES-49	Lot 92; 1-B	8145 Raphael Lane	\$ 203,520		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0470368	ES-50	Lot 93; 1-B	8165 Raphael Lane	\$ 203,520		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145
R0470442	MI-10	Lot 134; 1-B	7725 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470443	MI-11	Lot 133; 1-B	7705 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470445	MI-13	Lot 131; 1-B	7665 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470446	MI-14	Lot 130; 1-B	7645 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470448	MI-16	Lot 128; 1-B	7626 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470450	MI-18	Lot 126; 1-B	7650 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470452	MI-20	Lot 124; 1-B	7690 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470453	MI-21	Lot 123; 1-B	7716 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470454	MI-22	Lot 122; 1-B	7764 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470455	MI-23	Lot 121; 1-B	11332 Dante Circle	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470456	MI-24	Lot 120; 1-B	11330 Dante Circle	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470458	MI-26	Lot 118; 1-B	7830 Dante Drive	\$ 303,297		\$ 442,000	\$ 3,075	\$ 438,925	17	12.5%	\$ 178,664
R0470459	MI-27	Lot 117; 1-B	7870 Dante Drive	\$ 216,641		\$ 340,000	\$ 3,075	\$ 336,925	17	12.5%	\$ 137,145