BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **RIVER CANYON REAL ESTATE INVESTMENTS LLC,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 54582**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 17, 2010, Karen E. Hart and Debra A. Baumbach presiding. Petitioner was represented by William A. McLain Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2009 actual value of the subject properties.

Subject properties are described as follows:

161 Vacant Residential Lots located in River Canyon Subdivision, Filings 1-A and 1-B, Unincorporated Douglas County, Colorado (Douglas County Schedule Nos. R0467211+160)

The subject properties include 161 vacant single family lots located within the Ravenna Subdivision. The lots have completed on-site development and vary in size and location to the golf course, greenbelt and rock outcroppings.

Petitioner is requesting a value of $13,750,417.00 for tax year 2009 and Respondent assigned an actual value of $28,267,305.00 for tax year 2009.

Petitioner's witness, Mr. Carter D. Morrison, MAI, testified he relied on the market approach to establish retail values for each of the lots. Mr. Morrison believed that the sales occurring within the subjects' subdivision, within the appropriate 18-month base period, were the best indicator of lot values. There were 50 closed lot sales and seven lots that were under contract for sale during the time period. The sold lots ranged in size from 0.34 acres to 0.87 acres and sale price from

$100,000.00, for the smallest lot, to $710,000.00, for a lot with superior size and location. Residential vacant lot sales from competing subdivisions were also considered in the analysis as a test of reasonableness. Based on a weighted average of all the sales considered, a value of $342,787.00 per lot was indicated.

According to the developer, out of the 50 sales that occurred, 28 were investor sales or bulk sales. Under the guidelines from the Assessor's Reference Library (ARL), only the remaining 22 sales could be considered to be "end users" and qualified for present worth discounting. *See generally* ARL, Vol. 3, pg. 4.5. Mr. Morrison concluded to an absorption period of 7.2 lots per year per filing for Filing 1-A and Filing 1-B. Mr. Morrison concluded to a sellout period of 10 years for Filing 1-A and 25 years for Filing 1-B. Several investor surveys were analyzed in determining a discount rate of 20%, exclusive of a 15% deduction for entrepreneurial profit. Mr. Morrison concluded to a rate of 15.5% for Filing 1-A and 16.8% for Filing 1-B.

Mr. Morrison made a deduction of $19,704,819.00, equal to $62,006.00 from each remaining lot for completion of the golf clubhouse, fitness center, tennis courts, half-way house, casting club, maintenance building, and remaining land development. It was the understanding of each buyer that these amenities 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. Glenn Jacks, testified that club membership is fully refundable after 30 years and a percentage is refundable prior to 30 years. The membership agreement stated that once membership reaches 225 members, construction of the remaining facilities is required to begin.

Petitioner is requesting a 2009 actual value of $13,750,417.00 for the subject properties.

Respondent assigned an actual value of $28,267,305.00 for tax year 2009. Respondent presented an actual value of $40,636,656.00, based on the market approach.

Respondent's witness, Mr. Mike Shafer, Certified General Appraiser, testified the subject subdivision consists of 243 residential lots with 161 lots remaining in question (38 lots in Filing 1-A and 123 lots in Filing 1-B). The lots vary in size, types, views, golf course location, and proximity to the base of the foothills, which has superior views. In his valuation analysis, a 24-month time period was used to include two years of full seasons.

Mr. Shafer reviewed all three approaches to value the subject property; however, due to the available data, the sales comparison approach was determined to be the most reliable indication of value. There were five comparable vacant lot sales of larger lots, ranging in sale price from $340,000.00 to $545,000.00 and in size from 0.55 acres to 0.982 acres. There were also five comparable vacant lots sales of smaller lots ranging in sale price from $360,000.00 to $465,000.00 and in size from 0.33 acres to 0.468 acres. After adjustments, the larger lots sales ranged from $300,000.00 to $375,000.00, and the smaller lots ranged from $239,400.00 to $318,750.00.

Respondent's witness concluded to a base value of $296,000.00 for the smaller lots and $340,000.00 for the larger lots. Additional value was attributed to lots beyond the indicated base value for location and view, which created new value ranges of $340,000.00 to $488,000.00, for the smaller lots, and $391,000.00 to $561,000.00, for the larger lots. Respondent relied on sales within

the development to derive adjustment calculations for the sales requiring adjustments. Mr. Shafer only relied on sales from the subjects' subdivision, comprised of 24 lots in Filing 1-A and 44 lots in Filing 1-B. To eliminate any outside influences, Mr. Shafer did not consider sales from other competing subdivisions.

In determining which lots qualified for present worth discounting, Respondent considered both sales to "end users" and lots with foundations and improvements, which Petitioner did not consider. Therefore Respondent used more lots in its analysis than Petitioner, resulting in a shorter absorption period.

Respondent believed the absorption period should be applied to each filing separately. This resulted in 24 lots in Filing 1-A with an absorption period of four years and 44 lots in Filing 1-B with an absorption period of seven years. The composite discount rate for 2009-2010 ranged from 12% to 14%, as developed by the Colorado Division of Property Taxation (DPT) for statewide use. Respondent correlated to a 14% discount rate, which is at the top end of the range.

Mr. Shafer testified that, under the ARL guidelines, he made no deduction for remaining development costs related to the clubhouse and related structures. The developer is not obligated to construct the clubhouse and fitness center until 225 memberships have been sold. As of the date of value, that level of membership has not been reached and separate membership is required at the time of closing. Therefore, under the ARL guidelines, development costs should not be deducted.

Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly valued for tax year 2009.

The Board placed minimal weight on Petitioner's deduction of $19,704,819.00 for direct development costs associated with the remaining lots. Evidence and testimony indicated that the developer was under no obligation to construct the facilities until 225 golf club memberships were sold. As of the date of value, that level of membership had not been reached, and the Board agrees that under the ARL guidelines, development costs should not be deducted.

Petitioner provided no evidence that the purchase of a lot included construction of the clubhouse facility or membership to the club. Evidence indicated that lot buyers are required at the time of closing to pay a deposit to secure a club membership that could be refunded in the future. The deposit and fees were in addition to other costs buyers paid for a lot.

The Board concluded, after careful review of the ARL, that there is no requirement to apply the absorption rate to individual filings as testified by Mr. Shafer. According to the ARL, "[t]he 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 as follows: "[f]or subdivided land, the approved subdivision and/or its approved filings and/or its approved development tracts. Furthermore, "[a]n approved plat for subdivided land may include one or all filings within the subdivision." ARL, Vol. 3, pg. 4.28.

The Board gave more weight to Respondent's analysis, which used a total of 68 absorbed lots versus Petitioner's use of 22 lots. Under ARL, Vol.3, pg 4.5(c):

> [O]nly sales or long-term leases of lots to "end users" reduce the vacant land inventory and therefore, count toward the 80 percent sellout threshold. "End users" are those parties who intend to, are expected to, or have…construct[ed] improvements on the vacant lots for themselves or have begun construction of improvements, such as speculative homes, for others.

Petitioner's witness did not provide sufficient evidence that sales he excluded from his analysis were bulk lot sales to another land developer or subdivider, excluding them from consideration. According to the ARL, "The absorption rate calculation is based on the number of lots or tracts sold during the preceding data collection period." ARL, Vol. 3, p. 4.19. Petitioner has made a literal interpretation of the terms "sale" and "sold" used in the ARL. However, in the discussion of applicability of vacant land present worth procedure, the ARL also refers to sales or long-term leases of lots reducing the vacant land inventory.

Further, the Department of Property Taxation (DPT), the agency that promulgates the ARL, teaches that "any vacant lot on which improvements have begun should be counted as having been absorbed for the purpose both of determining whether the 80% sellout threshold has been reached and of calculating absorption period," in its instructional courses for assessors. *See* Resp. Post Hearing Exh. C, Aff. of Steven W. Campbell, Pg. 2, ¶ 8 and Resp. Post Hearing Exh. D, Aff. of Louise M. McElroy, Pg. 2, ¶ 6. Case law indicates that the DPT's interpretation of the ARL should be followed. *See generally Cendant Corp. and Subsidiaries v. Dept. of Revenue*, 226 P.3d 1102, 1106 (Colo. App. 2009) and *Nededog v. CO Dept. of Health Care Policy and Financing*, 98 P.3d 960, 962 (Colo. App. 2004) (stating that an agency's interpretation of a statute or regulation that the agency is charged with administering is accorded deference, so long as it is reasonable).

The Board concluded that DPT's broader interpretation of the total reduction of vacant lot inventory during the study period is a reasonable interpretation of the procedure to determine the absorption rate outlined in the ARL. Lots sold previously, but not developed until the current study period, remain part of the vacant lot inventory until they are actually improved. Therefore, they are reasonably part of the total inventory to be absorbed. The Board concluded that Respondent's use of lot sales plus other lots removed from the vacant land inventory, because of commencement of construction of improvements during the statutory base period, is appropriate.

The Board concluded that Petitioner provided insufficient evidence to support a discount rate of 15.5%. The ARL allows for a deviation from the DPT's published rate if supported through local documented specific data. While Petitioner presented numerous surveys suggesting a higher discount rate, none was shown to be specific to Douglas County or the subjects' subdivision. Profit is considered an indirect cost of development and is not allowed as a deduction under Section 39-1-103(14)(b), C.R.S.

Therefore, the Board relied on Respondent's indication of retail lot values in the calculation and used Respondent's number of lots remaining to be absorbed. The Board concluded that Respondent's conclusions of lot values were supported by the sales presented that occurred during the 18-month data collection period. Limiting the permits to the 18-month time period does not result in a change in the absorption period conclusion used by Respondent. Therefore, the Board

concluded that after making the mathematical change in the calculation of the absorption period, Respondent's assigned value is supported.

Regarding the 18-month versus 24-month data gathering period, Respondent's standard policy using a 24-month study period for the purposes of capturing two full years with all seasons is contrary to statute. An expansion of the data gathering period is permissible only when adequate data is not available. Section 39-1-104(10.2)(d), C.R.S. states in part:

> Beginning with the property tax year commencing January 1, 1999, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine such actual value for a class of property, "level of value" means the actual value of taxable real property as ascertained by said applicable factors for such one-and-one-half-year period, the six-month period immediately preceding such one-and-one-half-year period, and as many preceding six-month periods within the five-year period immediately prior to July 1 immediately preceding the assessment date as are necessary to obtain adequate comparable valuation data. Said level of value shall be adjusted to the final day of the data-gathering period.

The Board found Respondent's statements regarding the 24-month data gathering period scattered throughout Exhibit A to be contrary to statute and misleading.

After careful consideration of all the evidence and testimony presented, the Board concluded that no reduction in value is warranted.

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 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 of the respondent county, 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).

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 within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED this 25th day of February, 2011.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Debra A. Baumbach
Debra A. Baumbach

MAILED this 4 day of March, 2011.

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

Amy Bruins
Amy Bruins

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS