

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>MDC LAND CORPORATION,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 55048</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 16, 2010, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**136 Vacant Residential Lots located in the Villages at Castle Rock 2nd Amendment - Liberty Village Subdivision, Castle Rock, Colorado Douglas County Schedule Nos.: R048183 + 135 (See Addendum)**

The subject property includes 136 vacant single family lots of the 229 total lots in the subdivision. The lots were fully developed as of the date of value. The lots vary in location characteristics and range in size from 0.138 to 0.350 acre. The parcels are categorized as either typical lots or greenbelt lots.

Petitioner is requesting an actual value of \$3,363,533.00 for the subject property for tax year 2009. Respondent assigned a value of \$7,814,845.00 for the subject property.

Both parties relied on the sales comparison approach (market approach) to determine retail lot values. Both parties determined that the subject lots were eligible for present worth discounting (PWD), as described in the Assessor’s Reference Library (ARL). *See* ARL, Vol. 3.

Petitioner contends that Respondent used only sales that occurred in 2006 and 2007, and ignored deteriorating economic and market conditions that occurred in 2008, which resulted in an over-valuation of the adjusted selling price of the lots. Petitioner contends that Respondent used a 24-month data collection period instead of the 18-month period set by statute, and used incorrect methodology to calculate the absorption rate applied for the PWD. The ARL specifies that only sales from the base period shall be used to determine the absorption rate, but Respondent has also relied on building permits issued for vacant lots that were sold prior to the base period. Respondent contends the market was not decreasing, a 24-month study period is allowable, and that it is appropriate to use all lots that were removed from the vacant lot inventory during the study period to calculate the absorption rate.

Mr. Todd J. Stevens testified as a witness for Petitioner. Mr. Stevens presented six comparable sales located in other subdivisions, ranging in price per lot from \$45,599.00 to \$175,000.00 and in size from 0.20 to 1.27 acres. The witness testified that he concluded to a 3% per month downward time adjustment over the base period, based on two of his comparable sales. The adjustments to the sales for location and size were based on his experience. No supporting analysis for the adjustments was provided. After adjustments were made for changing market conditions (time), location, and site size, the sale prices ranged from \$34,000.00 to \$60,900.00. The witness concluded to a sale price of \$45,000.00 per lot for all of the subject lots.

To calculate the absorption period, the witness testified that there were 45 improved subdivision lot sales during the base period, which is equivalent to a rate of 30 lots per year. Using the absorption rate of 30, the witness concluded to an initial absorption period of seven years for the remaining lots, which he increased to nine years to reflect declining economic conditions through the end of the base period. Using the adjusted selling price of \$45,000.00 per lot, a nine-year absorption period, and 14.0% PWD rate, the witness concluded to a present worth value of \$24,732.00 per lot, which results in a total value for the 136 lots of \$3,363,552.00.

Respondent presented a value of \$8,857,112.00 for the subject property based on the market approach. Mr. Toby Damisch, Deputy Assessor with the Douglas County Assessor's Office, testified as a witness for Respondent. Mr. Damisch testified about the analysis used to estimate the time adjustment over the 24-month extended base period used by the county. The witness testified that all qualified, confirmed sales were used in the analysis. The analysis of the sale data indicated a generally flat to positive trend in the vacant land market. Mr. Damisch concluded that no time adjustment was warranted. Mr. Damisch testified that this conclusion would not have been different if sale data from an 18-month base period had been used. The witness also testified that Respondent's absorption rate calculation used sales during the base period plus other lots removed from the vacant lot inventory because they were improved during the base period.

Mr. John E. Whitley, a Licensed Appraiser with the Douglas County Assessor's Office, testified as a witness for Respondent. No single site sales in the subject filing occurred during the three-year period, ending on the appraisal date of June 30, 2008. The witness presented five primary comparable sales ranging in price from \$95,000.00 to \$103,000.00 per lot and from 0.176 acre to 0.290 acre in size. The witness testified that the sales used were selected based primarily on size. The witness did not present an adjustment grid for the sales analyzed, but presented a discussion of each sale compared to the subject lots. After considering the differences, the witness concluded to a

base value per lot of \$85,000.00. For the subject greenbelt lots, the witness presented a paired sales analysis to support a 15% premium for the greenbelt influence and concluded to a value per lot of \$97,750.00.

As a secondary analysis, Mr. Whitley compared the base value conclusion for the subject lots and median improved sale price in the subject development to the lot sale price and median improved sale price of lots in other developments. Using this method, the land allocation percentage at each of the other developments is comparable to the indicated land allocation for the subject subdivision. Lastly, the witness presented three bulk lot sales with a range in median sale price of \$76,593.00 to \$81,400.00 per lot. The witness testified that the bulk sales typically reflect a discount and are considered non-qualifying, non-arms length transactions according to the ARL. For these reasons, the value of the subject lots should not be lower than the median bulk sale prices per lot.

To calculate the absorption period, Mr. Whitley used a total of 79 lots absorbed during the base period, including the 45 sales used by Petitioner plus other vacant lots on which construction of improvements had begun during the period and thus, were removed from inventory. The witness concluded to an absorption rate of 42 lots per year and an absorption period for the remaining lots of four years, rounded according to the ARL guidelines. Like Petitioner, Respondent applied a 14.0% discount rate. Using the adjusted base selling price of \$85,000.00 per lot, four-year absorption period, and 14.0% PWD rate, the witness concluded to a present worth value of \$61,916.00 per lot for 89 of the subject lots. Applying the same methodology to the \$97,750.00 per lot value conclusion for the subject's greenbelt lots, the witness concluded to a present worth value of \$71,204.00 per lot for 47 of the lots. The total present worth value conclusion for the 136 lots was \$8,857,112.00. Respondent requested that the Board uphold the assigned value of \$7,814,845.00.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect.

The Board concludes that Petitioner provided insufficient analysis or support for the large adjustments made to Petitioner's comparable sales. Through rebuttal, Respondent presented reasonable justification to demonstrate that Petitioner's sales were not more credible than the sales used by Respondent. Petitioner calculated an absorption period for the subject lots, then increased it by two additional years to reflect a declining market. The Board concludes that Petitioner provided insufficient support for the two year increase.

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 concludes 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 concludes 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.

Regarding the 18-month versus 24-month data collection period, Respondent's standard policy of using a 24-month study period is contrary to statute. An expansion of the 18-month data collection 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 finds Respondent's statements regarding the 24-month data collection period scattered throughout Exhibit A to be contrary to statute. An example is on Resp. Exh. A, p. 3: "The effective date of the appraisal is the statutorily required *level of value* date of June 30, 2008 utilizing base period data from the 24 month study period of July 1, 2006 through June 30, 2008." The Board concludes that an adequate number of sales was available from the 18-month period to determine the market value and for the calculation of the absorption period. The Board concludes that Respondent's conclusions of lot values are supported by the sales presented that occurred during the 18-month data collection period. In this case, limiting the permits to the 18-month study period does not result in a change to the 4-year absorption period conclusion used by Respondent. Therefore, the Board concludes that after making the mathematical change in the calculation of the absorption period, Respondent's assigned value is supported.

## **ORDER:**

The petition is denied.

**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.

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 and MAILED this 1 day of March 2011.

BOARD OF ASSESSMENT APPEALS

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Louesa Maricle

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

M  
Amy Bruns



DOCKET55048--ADDENDUM  
DOUGLAS COUNTY ACCOUNT & PARCEL NUMBERS

	<u>Account#</u>	<u>Parcel#</u>	<u>Land Area (Acres)</u>	<u>CBOE Actual Value</u>
1	R0468183	234921401001	0.180	\$62,825
2	R0468184	234921401002	0.180	\$62,825
3	R0468185	234921401003	0.180	\$62,825
4	R0468186	234921401004	0.160	\$62,825
5	R0468187	234921401005	0.170	\$62,825
6	R0468189	234921401007	0.180	\$62,825
7	R0468190	234921401008	0.190	\$62,825
8	R0468191	234921401009	0.180	\$62,825
9	R0468192	234921401010	0.190	\$62,825
10	R0468193	234921401011	0.180	\$62,825
11	R0468200	234921401018	0.190	\$62,825
12	R0468201	234921401019	0.180	\$62,825
13	R0468202	234921401020	0.170	\$62,825
14	R0468203	234921401021	0.170	\$62,825
15	R0468204	234921401022	0.174	\$62,825
16	R0468206	234921401024	0.170	\$62,825
17	R0468207	234921401025	0.180	\$62,825
18	R0468208	234921401026	0.180	\$62,825
19	R0468209	234921401027	0.177	\$62,825
20	R0468210	234921401028	0.170	\$62,825
21	R0468272	234921403001	0.290	\$54,630
22	R0468274	234921403003	0.160	\$54,630
23	R0468275	234921403004	0.160	\$54,630
24	R0468276	234921403005	0.160	\$54,630
25	R0468277	234921403006	0.160	\$54,630
26	R0468278	234921403007	0.160	\$54,630
27	R0468279	234921403008	0.160	\$54,630
28	R0468280	234921403009	0.180	\$54,630
29	R0468281	234921403010	0.190	\$54,630
30	R0468282	234921403011	0.160	\$54,630
31	R0468283	234921403012	0.160	\$54,630
32	R0468284	234921403013	0.160	\$54,630
33	R0468285	234921403014	0.160	\$54,630
34	R0468286	234921403015	0.160	\$54,630
35	R0468287	234921403016	0.160	\$54,630
36	R0468288	234921403017	0.160	\$54,630
37	R0468292	234921404004	0.170	\$62,825
38	R0468295	234921404007	0.180	\$54,630
39	R0468296	234921404008	0.170	\$54,630
40	R0468297	234921404009	0.190	\$54,630
41	R0468298	234921404010	0.180	\$54,630
42	R0468299	234921404011	0.180	\$54,630
43	R0468300	234921404012	0.170	\$54,630
44	R0468301	234921404013	0.180	\$62,825
45	R0468302	234921404014	0.170	\$62,825
46	R0468303	234921404015	0.180	\$62,825
47	R0468304	234921404016	0.170	\$62,825
48	R0468305	234921404017	0.180	\$62,825
49	R0468306	234921404018	0.170	\$62,825
50	R0468307	234921404019	0.200	\$62,825
51	R0468308	234921404020	0.180	\$62,825
52	R0468309	234921404021	0.160	\$62,825

53	R0468310	234921404022	0.160	\$62,825
54	R0468311	234921404023	0.160	\$62,825
55	R0468312	234921404024	0.160	\$62,825
56	R0468313	234921404025	0.150	\$62,825
57	R0468314	234921404026	0.350	\$62,825
58	R0468315	234921404027	0.270	\$54,630
59	R0468316	234921404028	0.220	\$54,630
60	R0468317	234921404029	0.220	\$54,630
61	R0468318	234921404030	0.250	\$54,630
62	R0468319	234921404031	0.270	\$62,825
63	R0468320	234921404032	0.160	\$62,825
64	R0468321	234921404033	0.160	\$62,825
65	R0468322	234921404034	0.160	\$62,825
66	R0468323	234921404035	0.160	\$62,825
67	R0468324	234921404036	0.160	\$54,630
68	R0468325	234921404037	0.156	\$54,630
69	R0468331	234921404043	0.150	\$62,825
70	R0468347	234921404059	0.150	\$54,630
71	R0468355	234921404067	0.170	\$62,825
72	R0468356	234921404068	0.148	\$62,825
73	R0468357	234921405001	0.170	\$54,630
74	R0468358	234921405002	0.150	\$54,630
75	R0468359	234921405003	0.150	\$54,630
76	R0468360	234921405004	0.150	\$54,630
77	R0468361	234921405005	0.150	\$54,630
78	R0468362	234921405006	0.160	\$54,630
79	R0468363	234921405007	0.160	\$54,630
80	R0468364	234921405008	0.150	\$54,630
81	R0468365	234921405009	0.150	\$54,630
82	R0468366	234921405010	0.150	\$54,630
83	R0468367	234921405011	0.150	\$54,630
84	R0468368	234921405012	0.170	\$54,630
85	R0468369	234921406001	0.150	\$54,630
86	R0468370	234921406002	0.140	\$54,630
87	R0468371	234921406003	0.140	\$54,630
88	R0468372	234921406004	0.140	\$54,630
89	R0468373	234921406005	0.140	\$54,630
90	R0468374	234921406006	0.140	\$54,630
91	R0468384	234921406016	0.140	\$54,630
92	R0468385	234921406017	0.140	\$54,630
93	R0468386	234921406018	0.140	\$54,630
94	R0468387	234921406019	0.160	\$54,630
95	R0468388	234921406020	0.200	\$54,630
96	R0468389	234921406021	0.280	\$54,630
97	R0468390	234921406022	0.160	\$54,630
98	R0468391	234921406023	0.140	\$54,630
99	R0468392	234921406024	0.140	\$54,630
100	R0468393	234921406025	0.140	\$54,630
101	R0468394	234921406026	0.150	\$54,630
102	R0468395	234921406027	0.180	\$54,630
103	R0468396	234921406028	0.210	\$54,630
104	R0468397	234921406029	0.190	\$54,630
105	R0468398	234921406030	0.160	\$54,630
106	R0468399	234921406031	0.140	\$54,630
107	R0468400	234921406032	0.140	\$54,630
108	R0468401	234921406033	0.140	\$54,630
109	R0468402	234921406034	0.150	\$54,630
110	R0468403	234921406035	0.150	\$54,630

111	R0468404	234921406036	0.170	\$54,630
112	R0468405	234921406037	0.200	\$54,630
113	R0468406	234921406038	0.160	\$54,630
114	R0468407	234921406039	0.140	\$54,630
115	R0468408	234921406040	0.140	\$54,630
116	R0468409	234921406041	0.138	\$54,630
117	R0468410	234921406042	0.140	\$54,630
118	R0468411	234921406043	0.140	\$54,630
119	R0468412	234921406044	0.140	\$54,630
120	R0468413	234921406045	0.160	\$54,630
121	R0468467	234921409001	0.180	\$54,630
122	R0468468	234921409002	0.150	\$54,630
123	R0468469	234921409003	0.178	\$54,630
124	R0468470	234921409004	0.170	\$54,630
125	R0468471	234921409005	0.230	\$54,630
126	R0468472	234921409006	0.210	\$54,630
127	R0468490	234921409024	0.150	\$54,630
<b>128</b>	R0468491	234921409025	0.140	\$54,630
<b>129</b>	R0468492	234921409026	0.160	\$54,630
130	R0468493	234921409027	0.190	\$54,630
131	R0468498	234921410005	0.250	\$54,630
132	R0468502	234921410009	0.300	\$54,630
133	R0468614	234922301001	0.190	\$62,825
134	R0468615	234922301002	0.172	\$62,825
135	R0468616	234922301003	0.165	\$62,825
136	R0468629	234922302004	0.180	<u>\$62,825</u>
				\$7,814,845