

<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>NORDIC LAND COMPANY,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 55952</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 3, 2011, Debra A. Baumbach and Lyle D. Hansen presiding. Petitioner was represented by Mr. Carl H. Luppens, owner and President for Nordic Land Company. Respondent was represented by Christina Hooper, Esq. Petitioner is protesting the 2010 actual value of the subject property.

Dockets 54702 and 55952 were consolidated for purposes of the hearing only.

Respondent's counsel, Ms. Christina Hooper, stated that the property owner indicated on the petition was Carl H. Luppens and that the Eagle County's Notice of Determination indicated the property ownership as Nordic Land Company. Petitioner's counsel offered a motion that the ownership indicated on the Petition be changed to Nordic Land Company. Respondent agreed, and the Board granted the motion. Mr. Luppens indicated that he and his wife, Diane Luppens, are the only shareholders and that their property taxes are under \$10,000.00, which qualified Mr. Luppens to represent Petitioner as an entity.

Subject property is described as follows:

**345 Bucktail, Gypsum, Colorado  
Eagle County Schedule No. R057654**

The subject property consists of a vacant residential lot situated in the Brightwater Club Subdivision. The lot contains a total of 1.329 acres. Streets and utilities were in place as of the date of the appraisal.

Petitioner is requesting an actual value of \$150,000.00 for the subject property for tax year 2010. Respondent assigned a value of \$325,600.00 for the subject property for tax year 2010.

Petitioner presented 20 comparable sales ranging in sale price from \$138,350.00 to \$215,000.00 and in size from 0.22 to 0.88 acres. The Board noted that Petitioner's first and last four sales were duplicate listings, and the duplicates listings were only considered once by the Board. No adjustments were accomplished.

Mr. Luppens testified about the declining market impacting the subject subdivision's lot sales during the six months period prior to the appraisal date of June 30, 2008, as evidenced by no lot sales in the subject subdivision since December of 2007. He testified that, as of June 30, 2008, the front nine holes of the golf course had been completed, but the back nine holes were not open. Also, the clubhouse had not been built, and the developer never completed all of the proposed streets and amenities. He testified that his motivation to purchase the subject lot was to assist a friend, who was the owner and needed financial relief. The purchase price was \$75,000.00. Mr. Luppens testified he accomplished a land residual technique in the income approach and derived a value of \$0.00. Mr. Luppens questioned the present worth analysis accomplished by the Eagle County Assessor, referencing errors in the absorption period. He concluded an absorption period of 30 years and used a discount rate of 15% applied against a value of \$325,000.00, resulting in a present worth value below \$5,000.00.

Mr. Luppens believed that, after the assessment date, the highest and best use of the subject property had changed from semi-custom homes to open space due to changes in the subject property's economic viability. Though use is typically determined based on a property's physical condition on the assessment date, Mr. Luppens believed that Section 39-1-104(11)(b)(I), C.R.S., which states that an assessor can determine value after the assessment date if there is an unusual condition, required the Assessor to adjust the value of his property to reflect the unusual condition.

Respondent presented a value of \$375,000.00 for the subject property based on the market approach.

Respondent's appraiser, Ms. Dixie Kozinski, presented six comparable sales ranging in sale price from \$325,600.00 to \$480,000.00 and in size from 0.94 to 1.458 acres. No adjustments were made and the sale range was unchanged.

Respondent's appraiser, Ms. Dixie Kozinski, testified that all of her comparable sales had been verified through the Eagle County Assessor's Office, using transfer declarations and conversations with buyers. She testified that she deducted \$60,000.00 for golf course memberships from each comparable sale price to reflect the net sale price attributable to the purchase of the lot. She testified that all of Petitioner's comparable sales were of lots with smaller size, were from inferior neighborhoods and had inferior views. Ms. Kozinski testified that as of the appraisal date of June 30, 2008, some slowing of lot sales did occur but that sale prices of lots remained stable. She testified that no present worth discounting was accomplished because the number of lots sold exceeded the 80% threshold with 89% of the lots sold. She testified that the Petitioner re-financed the subject lot in March of 2008 at \$331,500.00.

Respondent's witness, Mr. Kyle Hooper from the Division of Property Taxation for the State of Colorado, testified that no consideration can be given to value data after the June 30, 2008 appraisal date. He testified that a change in use of the lot must be a physical change.

Respondent assigned an actual value of \$325,600.00 to the subject property for tax year 2010.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2010.

The Board was not persuaded by Petitioner's argument that Section 39-1-104(11)(b)(I), C.R.S., applies to the subject property. An exhaustive list of unusual conditions is provided, as follows:

[A]n unusual condition which could result in an increase or decrease in actual value is limited to the installation of an on-site improvement, the ending of the economic life of an improvement with only salvage value remaining, the addition to or remodeling of a structure, a change of use of the land, the creation of a condominium ownership of real property as recognized in the "Condominium Ownership Act", article 33 of title 38, C.R.S., any new regulations restricting or increasing the use of the land, or a combination thereof, the installation and operation of surface equipment relating to oil and gas wells on agricultural land, any detrimental acts of nature, and any damage due to accident, vandalism, fire, or explosion. When taking into account such unusual conditions which would increase or decrease the actual value of a property, the assessor must relate such changes to the level of value as if the conditions had existed at that time. (II) The creation of a condominium ownership of real property by the conversion of an existing structure shall be taken into account as an unusual condition as provided for in subparagraph (I) of this paragraph (b) by the assessor, when at least fifty-one percent of the condominium units, as defined in section 38-33-103(1), C.R.S., in a multiunit property subject to condominium ownership have been sold and conveyed to bona fide purchasers and deeds have been recorded therefor. Section 39-1-104(11)(b)(I), C.R.S.

Petitioner testified that the unusual condition affecting his property was "economic viability." This is not a statutorily recognized unusual condition. As such, the Board can only consider the physical condition of the subject property as of the assessment date.

Pursuant to case law, highest and best use will be determined based on reasonable future use; speculative future uses cannot be considered in determining a property's present market value. *Board of Assessment Appeals v. Colo. Arlberg Club*, 762 P.2d 146 (Colo. 1988). As of the assessment date, Respondent determined that the highest and best use for the subject property was improved residential. The Board agrees that determination and finds that, as of the assessment date, any argument that the highest and best use was open space was speculative.

The Board concurred with Respondent's value conclusion derived by Ms. Kozinski. The Board placed greater reliability upon Respondent's value conclusion because of the comparability of her six comparable sales in location, lot size, neighborhood amenities, access and infrastructure. The subject lot sale that occurred on September 26, 2006 was included as the sixth sale in the valuation analysis. The other five sales were located in the subject subdivision and in the same general area as the subject. Two of the sales were located in the same block and on the same street as the subject lot. The other three sales were located two blocks from the subject lot. The other five comparable sales sold between September 26, 2006 and January 31, 2008, and prior to the appraisal date of June 30, 2008. Ms. Kozinski concluded highest and best use as presently improved as a single-family residential lot in a developing residential subdivision. The six sales were confirmed by Ms. Kozinski through interviews with the buyers or sellers and from public record.

**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 27 day of May 2011.

**BOARD OF ASSESSMENT APPEALS**

Debra A. Baumbach

Debra A. Baumbach

Lyle D. Hansen

Lyle D. Hansen

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

Amy Bruins  
Amy Bruins

