BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 65097
Petitioner: **CENTRAL PLATTE VALLEY MANAGEMENT, LLC** v. Respondent: **DENVER COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 11, 2015, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Mitch T. Behr, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2011 and 2012.

Petitioner and Respondent have jointly requested a hearing consolidation to include Docket Nos. 65089, 65090, 65091, 65093, 65094, 65096, 65097, 65098, 65101, 65105, and 65106. A decision for each Docket No. will be issued by the Board.

The parties stipulated to an adjusted selling price of $60 per square foot of land based on the sales comparison approach, and to a present worth discount rate of 15 percent for the subject property (the "Property"). The parties stipulated that the sole issue to be determined by the Board is the proper sellout or absorption rate to be applied to establish the present worth value of the Property for calendar years 2011 and 2012.

The subject property is described as follows:

1750 Little Raven Street, Denver, Colorado
Denver County Parcel No. 02332-22-007-000

The Property consists of a 83,405 square foot lot in The Commons subdivision, Filing 8, located northwest of the Denver Central Business District near Union Station. The lot was vacant as of the assessment date for tax years 2011 and 2012. The lot is zoned PUD and, more specifically, is

part of a zone district known as PUD 531, an area that permits a wide variety of high density residential and commercial development.

Petitioner is requesting an actual value of $1,130,000 for the Property for tax years 2011 and 2012. Respondent assigned a value of $3,653,100 for the Property for those tax years.

Petitioner claims that the sellout period of all lots in The Commons subdivision must be considered in estimating an absorption rate, not just the sellout of lots in each filing. Petitioner further contends that some of Respondent's sales used to estimate absorption should be disqualified, which would lower Respondent's absorption estimate.

Petitioner presented Mr. Christopher N. Baker, MAI as witness. Mr. Baker is a Certified General Appraiser in the State of Colorado and is employed by CBRE, Inc. Mr. Baker presented a report he prepared to analyze absorption and the value of the Property using present worth discounting. There were no sales of lots within The Commons subdivision within the statutory 18-month data collection period for use in estimating an absorption rate. The witness testified that the competitive environment for the subject lot is PUD 531; no other competing subdivisions exist. The witness testified that it is inappropriate to analyze and evaluate sales that occurred in The Commons subdivision within the five year extended base period to estimate an absorption rate because market conditions during the extended base period and the 18-month base period for these tax years were different. The witness concluded that considering sales during the extended base period could be misleading. The witness did not do a separate absorption rate calculation for each filing because filings are strictly administrative in nature and in his opinion, PUD 531 is the only competitive environment for the subject lot. Using the Assessor's Reference Library (the "ARL") as guidance, the witness concluded that because no comparable subdivisions exist, it is assumed that at least one sale has occurred during the data collection period.

> "Identifying all lots or tracts within an approved plat or competitive environment is the initial step in determining the applicability of present worth valuation procedures for vacant land.
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> For the purposes of the procedures, approved plats are defined as:
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> 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
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> An approved plat for subdivided land may include one or all filings within the subdivision." ARL, Volume 3, Chapter 4, p. 4.4.

Using an absorption rate of one sale for an 18-month data collection period to establish an annual absorption rate, the witness concluded that a 29-year absorption period is appropriate for the present worth discounting analysis. Applying that methodology to the stipulated adjusted sale price of the Property and using the stipulated 15 percent discount rate, the witness concluded to a value for the Property of $1,130,000.

Regarding the sales used by Respondent that occurred during the five year extended base period to support an absorption estimate, the witness testified that six of the eight sales should be disqualified because they involved "developer to developer" sales, not sales to end users, or involved related parties so were not arm's-length transactions. Therefore, those lots have not been removed from the subdivision inventory and cannot be used to estimate absorption.

Petitioner is requesting an actual value of $1,130,000 for the Property for tax years 2011 and 2012.

Respondent presented Mr. Greg A. Feese a Certified General Appraiser in the State of Colorado as witness. Mr. Feese is employed by the Denver Assessor's Office and presented a report he prepared to analyze absorption and the value of the Property using present worth discounting. The witness testified that PUD 531 is a zone district within the PUD zoning; it is not a plat. The Commons is not the only subdivision that has PUD 531 zoning. The filings in The Commons subdivision were approved at different times and some of the filings had sold out before the final filing was approved. The witness cited the ARL as support for his conclusion that absorption should be calculated for each filing within The Commons and not for the subdivision as a whole:

> "If separate portions, phases or filings of a subdivision are approved at different times, then each becomes a separate approved plat and absorption calculations for each approved plat are required." ARL, Volume 3, Chapter 4, p. 4.4.

Mr. Feese agreed with Petitioner's witness that there were no lot sales within The Commons filings during the 18-month base period. He testified that because there were insufficient sales within the base period, an extended sales search in six month increments for up to five years is permitted by Section 39-1-104(10.2)(d), C.R.S. Therefore, the witness presented eight sales that occurred during the five year extended base period including six within The Commons subdivision and two in competing subdivisions. Mr. Feese disagreed with Petitioner's witness that six of the sales should be disqualified and testified that based on his research and information provided on the Real Property Transfer Declaration (TD-1000) forms filled out by the buyers at the time the lots sold, it was his opinion that the eight sales were all qualified sales. Using the eight sales, the witness concluded to a 1.6 annual absorption rate (eight parcel sales ÷ five years), which results in an absorption period of less than 12 months for Filing 8 for tax years 2011 and 2012.

Mr. Feese presented a test of reasonableness analysis for the absorption rate. The analysis showed that The Commons Filing 1 was platted in 2000 and included 39 townhome parcels and 16 other larger building parcels for a total of 55 lots. Filing 1 includes about 75% of all parcels in all filings of The Commons subdivision. The last sale in this filing was in 2007, which reflects a 6.8 parcel per year absorption rate over eight years. When the townhome parcels are excluded from this analysis, the rate drops to two parcel sales per year. The witness also presented a summary of the sales within all filings of The Commons from the first filing in 2000 to the present. The sales show changes in the land sales cycle. There was initial strong market activity from 2000 to 2003, a slow year in 2004, steady activity from 2005 through 2007, and slowing market conditions and activity between 2009 and 2010 prior to the 2011 and 2012 tax years at issue in this case.

Applying the 1.6 annual absorption rate to the stipulated adjusted sale price of the Property and using the stipulated 15 percent discount rate, the witness concluded to a value for the Property of $5,004,300 for both tax years 2011 and 2012. This value is higher than the value of $3,653,100 assigned for 2011 and 2012.

Respondent presented witness testimony by Mr. Larry George a Certified General Appraiser in the State of Colorado and Deputy Assessor in the Denver Assessor's Office. Mr. George testified about the ARL requirement for present worth procedures that the vacant land value reflected in the adjusted sale price must not fall below the most comparable value of raw land, ARL, Volume 3, Chapter 4, p. 4.8. Mr. George testified that a chart of 43 land sales presented in Mr. Feese's report were analyzed and support a raw land value of $40 per square foot. which should represent the "floor" or lowest market value relative to the Property. Mr. George referred to Petitioner's value per square foot of $16.94 after applying present worth discounting to the stipulated adjusted sale price of $60 per square foot as being below the raw land value, so it is not in compliance with the ARL.

Respondent assigned an actual value of $3,653,100 to the Property for tax years 2011 and 2012.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2011 and 2012 valuations of the Property were incorrect.

Petitioner's witness placed emphasis on the term "competitive environment" in determining what sales should properly be used to estimate absorption. The Board cites the ARL definition in concluding that "competitive environment" does not apply in the case of the Property:

> "A competitive environment is defined as a group of **unplatted** properties that share sufficient similar characteristics considered for purchase by buyers interested in the similar (homogeneous) property characteristics." ARL, Volume 3, Chapter 4, p. 4.29. (Emphasis added).
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> "Competitive environments are established for unplatted tracts only. A parcel or parcels of land should **not** be included in both an approved plat **and** a competitive environment." ARL, Volume 3, Chapter 4, p. 4.14. (Emphasis in original).

The Board was not persuaded by Petitioner that the absorption estimate should be based on the total number of lots in the combined eight filings of The Commons subdivision. Petitioner cited the ARL as support for the claim that the entire subdivision should be used. However, the Board finds from the evidence presented that the eight filings in The Commons subdivision were approved during the period of 2000 to 2009. Based on the facts, the Board relies on the ARL guidance and concludes that the filings have each become a separately approved plat and Respondent's use of an absorption calculation for each filing is proper.

The Board concurs with Respondent that when insufficient sales are available from the 18-month data collection period, it is proper to broaden the search for qualified sales for up to five years prior to the statutory base period. The evidence showed that the eight sales analyzed from that

extended base period were within The Commons subdivision and a competing downtown subdivision, so the Board concludes that using these older sales is reasonable. The Board finds the evidence and testimony of Respondent's witness, Mr. Feese, more credible than Petitioner's witness relative to the qualification of the eight sales used by Respondent to support an absorption rate. Based on the evidence given, the Board does not find the claim by Petitioner's witness, Mr. Baker, credible that six of the sales should be disqualified.

The Board considered the evidence given regarding the history of sales in all of The Commons subdivision filings since 2000, and concludes that Petitioner's use of a 29-year absorption period is not supported. The Board was persuaded by evidence presented by Respondent that the market conditions during the 18-month base period were considered relative to lot sales in earlier years and that the absorption rate used by Respondent was reasonable by comparison.

ORDER:

The petition is denied. The Board upholds Respondent's value of $3,653,100.

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-nine 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-nine 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 21st day of April 2015.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Louesa Maricle

Louesa Maricle

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

Milla Lishchuk