BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 54334
Petitioner: **GRANBY REALTY HOLDINGS, LLC,** v. Respondent: **GRAND COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 4 and 5, 2011, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Alan Poe, Esq. and J. Lee Gray, Esq. Respondent was represented by Anthony J. DiCola, Esq. and Robert Franek, Esq. Petitioner is requesting reclassification of the properties from vacant land to forest agricultural and the corresponding reduction in valuation and abatement/refund for tax year 2008. Petitioner further protests the valuation of the property as vacant land in the event the Board determines that any portion of the subject property should not be classified as forest agricultural land for tax year 2008.

At the outset of the hearing, both parties agreed to consolidate Dockets 54333, 54334, 54335, and 56038 for purposes of the hearing only.

Petitioner is requesting an actual value of $1,300.00 for the subject property for tax year 2008, based on a forest land agricultural classification. Respondent assigned a value of $4,273,860.00 for 2008, based on a vacant land classification.

GENERAL PROPERTY DESCRIPTION:

Subject property is described as follows:

65 Residential Lots within Granby Ranch Filings 6, 10, and 11,
Granby, Colorado
Grand County Schedule Nos. 304378 + 64 (See Addendum)

The subject property encompasses some of the land in Granby Ranch Filings 6, 10, and 11. All of the properties included in this petition are part of the large Granby Ranch year-round planned development that is comprised of approximately 5,000 acres. Granby Ranch offers a private ski resort, private 18-hole golf course with amenities, fishing, camping, and hiking trails. The Granby Ranch property was purchased in 1995 by Silvercreek Holdings, Inc., now known as SolVista Corporation and was transferred in 2005 to Granby Realty Holdings, LLC (Petitioner), described as a wholly owned subsidiary of SolVista Corporation. Granby Ranch was annexed into the town of Granby in 2003. Portions of the ranch, including of the subject properties, have been platted and subdivided for single family home development. Filings 6, 10, and 11 were platted during 2005 through 2007. At the time each subdivision was platted, the Assessor assigned schedule numbers to each lot and tract. Petitioner contends that the subject properties are part of the larger land holding that is included in the Landowner Forest Stewardship Plan and Forest Agriculture Plan for SolVista Golf and Ski Ranch (the "Forest Plan"), dated September 2001.

The Forest Plan indicates that SolVista, Inc. is the owner of the property. The Forest Plan states that the land area covered by the plan includes 4,998 acres, of which, 2,348 acres are forested. The Forest Plan divides the 5,000-acre area into 24 general management unit areas (MU) and forest management practices to be applied are developed for each MU. The Forest Plan identifies the acreage within each MU that is forested and non-forested. The subject properties are located within two of the 24 MU areas, though the exact location of each of the schedule numbers within the applicable MU could not be accurately determined. The land areas included in this case are identified more specifically in the following section.

SPECIFIC AREA DESCRIPTIONS:

Granby Ranch Filing 6, also referred to as Saddle Ridge (or Prospect Ridge), was platted in 2005. Filing 6 includes a total of 55 residential lots and has subdivision improvements. The land at issue in this case includes one remaining 0.36-acre residential lot. Filing 6 is located within MU-13 in the Forest Plan, which shows that the MU is 100 percent forested. Evidence and testimony showed there has been no recent forest management activity prescribed for this land, but the land in Filing 6 is included in the larger Granby Ranch property and is included in the Forest Plan.

Granby Ranch Filing 10 is referred to as Trailside. It was platted in 2007. Filing 10 has subdivision improvements and includes a total of 55 residential lots. Some lots in Filing 10 have been sold. The land at issue in this case includes 20 residential lots. The land areas included in the 20 schedule numbers range from 0.605 to 0.967 acre in size, and the total land area at issue is 14.406 acres. Filing 10 is located within MU-9, which the Forest Plan shows is 100 percent forested. Petitioner presented testimony that trees were previously clear cut in some areas in Filing 10 to add ski runs to the existing ski resort. However, the additional ski runs were not developed and some trees are being regenerated naturally in those areas. Evidence and testimony showed there has been no recent forest management activity prescribed for this land, but the land in Filing 10 is included in the larger Granby Ranch property and is included in the Forest Plan.

Granby Ranch Filing 11 includes the Settlers Ridge and Eagle Crest subdivision areas. It was platted in 2007. Filing 11 includes a total of 52 residential lots plus tracts for roads and recreation

open space. The Settlers Ridge portion of Filing 11 includes 23 residential lots. As of January 1, 2008, approximately 6.5% of the subdivision infrastructure costs had been completed. Petitioner presented testimony that considerable dirt work was previously done, including the removal of trees, but the trees could be regenerated. The Eagle Crest portion of Filing 11 has 29 lots. As of January 1, 2008, approximately 14.5% of the subdivision infrastructure costs had been completed. Petitioner contends no lots had been sold in either Settlers Ridge or Eagle Crest as of January 1, 2008. The land in Filing 11 at issue in this case includes 44 residential lots. The land areas included in the 44 schedule numbers range from 0.30 to 1.45 acres in size, and the total land area at issue is 29.747 acres. Filing 11 is located within MU-13 in the Forest Plan, which shows it is 100 percent forested. Petitioner provided testimony that prior to 2010, forest management activity included tree thinning and removal of beetle kill and fallen trees in 2007 and 2009. The land in Filing 11 is included in the larger Granby Ranch property and is included in the Forest Plan.

FOREST AGRICULTURAL CLASSIFICATION:

Petitioner's Contentions

Petitioner claims that the land at issue meets the statutory requirements:

> A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land. Section 39-1-102(1.6)(a)(II), C.R.S.

Though the land areas defined by the individual schedule numbers included in this case do not all meet the 40-acre minimum requirement, Petitioner contends that the land delineated by each of the Assessor's schedule numbers is part of the larger 5,000-acre functional parcel known as Granby Ranch. Therefore, the entire Granby Ranch property functions as a single parcel and meets the 40-acre minimum parcel size required by statute. None of the Granby Ranch land is used for farm or ranch purposes.

Petitioner contends that Grand County's use of a minimum of forty acres per schedule number is contrary to the Colorado Supreme Court's interpretation of the term "parcel" as used in connection with agricultural land classification. In *Douglas County Board of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996), the Supreme Court determined that the focus should be on whether the subject property is a segregated parcel or whether the subject property is part of an integrated larger parcel. According to Petitioner, the Supreme Court in *Clarke* rejected the per-schedule approach adopted by Grand County here, and instead required that the Board consider the functional use and integration of the land in defining the parcel to which the statutory requirements are applied.

Petitioner contends that the subject properties are all within the larger land holding that is included in the Forest Plan and that the forested areas on the larger Granby Ranch property are part

of a single integrated forest system. In reference to the subject properties that have been subdivided, Petitioner presented testimony by Mr. Kyle Harris, Chief Executive Officer of Granby Realty Holdings, LLC, that the design philosophy used in the subdivision platting was to have every lot abut recreation open space on at least one side. Petitioner continues to own all the land that is between the various lots. Despite platting some areas of the property, all of the property has continued to be managed in accordance with the Forest Plan, entitling the property to forest land agricultural classification.

Petitioner presented testimony of Mr. George S. Edwards, III, Consultant and Owner of Land Management Assistance and the professional forester who authored the Granby Ranch's 2001 Forest Plan. Mr. Edwards is employed by Petitioner as a consulting forester. Mr. Edwards testified that since 2001, the larger Granby Ranch property has continuously been managed in accordance with the Forest Plan. The intent of the Forest Plan is to increase the health, vigor, and beauty of the forest land through forest management practices. Mr. Edwards testified that the Forest Plan for Granby Ranch covers a ten year period, which is typical. The Forest Plan may be updated for changes occurring to the property during the ten-year plan period, and should be updated at the end of the ten years. The Forest Plan has not been updated since it was written in 2001. Once a lot or tract is sold, Petitioner no longer takes care of that land as part of the Forest Plan but does take care of open space areas within subdivisions. Petitioner provided sales receipts as evidence of sales of tangible wood products from the Granby Ranch forest land. Evidence of net income from the sale of the wood products was not provided. Petitioner contends that, because of the extensive beetle kill affecting forests in Colorado and particularly in Grand County, there has been a glut of wood products and the market did not support a profit from the sale of wood products for this period. Despite this, Petitioner did manage to sell wood products to Intermountain Resources, LLC, one of the few saw mills in the area. Evidence was presented to show that Petitioner files an annual inspection request with the Colorado State Forest Service (CSFS) for the land included in the Forest Plan, pays a fee to the CSFS for the inspection of the property and review of the annual work plan, and the subject property was included in the annual CSFS letter to the Grand County Assessor, citing eligibility for forest agricultural classification.

Petitioner acknowledged that the Forest Plan shows "Sol Vista" as the owner of the properties encompassed by the plan and that many of the tax identification schedule numbers included in the Forest Plan were subsequently changed. Petitioner contends that Granby Realty Holdings, LLC is a subsidiary of Sol Vista. Therefore, the name change is not a relevant issue. Petitioner contends that although the tax identification schedule numbers for the subject properties in 2008 do not appear in the list of property schedule numbers included in the 2001 Forest Plan, the land encompassed by the Forest Plan did not change. The fact that the schedule numbers changed after 2001 does not alter the land covered by the Forest Plan, so is irrelevant. Petitioner contends that although the CSFS letter to the Assessor recommending forest agricultural classification for the subject property for tax year 2008 shows Sol Vista as the owner and the attached list of property identification schedule numbers does not show the current schedule numbers for the subject properties, these issues do not negate the validity of the Forest Plan.

Petitioner contends that the land encompassed by Filings 6, 10, and 11 is forested, is contiguous to the larger Granby Ranch parcel, is included in the Forest Plan, and should be classified

as forest land agricultural. Petitioner claims that the property should have been classified as forest land agricultural for tax year 2008 and should have been assigned a total actual value of $1,300.00 for 2008.

Respondent's Contentions

Respondent contends that the properties included in this case do not meet the requirements under Section 39-1-102(1.6)(a)(II), C.R.S. Each assessor's schedule number identifying the properties must be viewed as a separate parcel, and the majority of the land covered by the schedule numbers in this case do not meet the 40-acre minimum size. Respondent cited the Assessor's Reference Library (ARL) as the source the Assessor must rely on for the definition of a parcel. The ARL states that "[A] parcel is a defined area of real estate." ARL, Vol. 2, p. 6.5. The ARL also states: "[A] legal description identifies a parcel of real property in such terms that it cannot be confused with any other parcel." ARL, Vol. 2, p. 13.1. The Town of Granby has zoned the subject properties as Sol Vista Residential Mixed Use (SV RMU), which bars agricultural activities.

Section 39-1-102(1.6)(a)(I), C.R.S. provides the following provision for agricultural land: "a parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned." This provision is not written into the statutory language for forest agriculture. Because it was not part of the language, Respondent concluded that it matters if the lots are in an unincorporated portion of the county or in an incorporated town, and the zoning matters. On that basis, Respondent contends that the zoning prohibits the subject properties from qualifying for forest agricultural land classification. Once platted, the land included in the subdivision areas changed use to residential land.

In *Clarke*, the Court discussed the definition of parcel, as provided by Colorado Statute under county planning and building codes. *Clarke,* 921 P.2d at 723 (citing Section 30-28-602(5), C.R.S.). The lots in this case are platted lots in a subdivision. Therefore, Respondent claims the definition of subdivision found at Section 31-23-201(2), C.R.S. is the applicable statute. Pursuant to that statute, subdivision means "[T]he division of a lot, tract, or parcel of land into two or more lots...for the purpose, whether immediate or future, of sale or of building development."

Respondent contends that the subject properties are not used to produce tangible wood products for the primary purpose of obtaining a monetary profit. There have been no forest agricultural activities on the protested properties during the current or previous two years, as is a requirement under the agricultural, but not forest agricultural, statute. Since 1998, the gross revenue from the sale of wood products from the entire Granby Ranch property has amounted to $9,000.00 but residential lot sales have totaled millions of dollars. The amount of tree cutting and removal at Granby Ranch is similar to the work done by other property owners within Granby Ranch and Grand County as a whole in response to the pine beetle infestation damage.

Respondent contends that the Forest Plan's primary purpose is real estate development and lot sales, not forest management. As stated in the Forest Plan, of the 2,364 acres of forested land, only 262 acres, or 11 percent, of the forested acreage was scheduled for treatment during the entire ten-year forest plan period. The actual surface use of the land is unimproved and improved residential.

Subdivision developments have nothing to do with promoting a healthy forest. Respondent further contends that the CSFS letter to the Assessor recommending forest agricultural classification did not show the correct owner of the properties and did not include the correct schedule numbers to legally identify the properties. Therefore, Petitioner failed to meet the statutory requirement that the property be subject to a forest management plan and cited the statue which states: "No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service." Section 39-1-102(1.6)(a)(V)(4.4), C.R.S.

The subdivision lots are adjacent and contiguous to lots which have been sold to third parties. It is inequitable to allow the developer to have a patchwork quilt of "forest agriculture" lots in a subdivision. Valuing similar property similarly situated is consistent with statutory and constitutional mandates to achieve just and equalized values for purposes of taxation. Section 39-1-103(5)(b), C.R.S.

The assessor has a statutory obligation to correct mistakes. Section 39-1-103(5)(c), C.R.S. provides that once property is classified it shall remain so classified until the assessor discovers that the classification is erroneous. *Id.* The Assessor, Mr. Tom Weydert, testified that after receiving a copy of the Forest Plan for the first time in 2009 and having an opportunity to read it, he concluded that the prior classification of forest agricultural was erroneous and he was obligated to correct the error.

Board Conclusions

"Under the applicable statutory scheme, taxpayer [has] the burden of proof to show any qualifying uses of [its] land in the relevant years in support of [its] claims for agricultural classification." *Hepp v. Boulder County Assessor*, 113 P.3d 1268, 1270 (Colo. App. 2005).

As stated in *Clarke*, "Agricultural land in Colorado receives favorable ad valorem tax treatment, calculated on the basis of the earning or productive capacity of the land. Therefore, classification of property as agricultural is a benefit that was carved out to encourage and to protect ongoing agricultural use." *Clarke* at 726 (citing Colo. Const. art. X, § 3;§ 391103(5)(a), 16B C.R.S. (1994)).

Section 39-1-102(1.6)(a), C.R.S., defines agricultural land to include:

> A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section.

After reading the statute, the Board finds that it needs to answer the following five questions: 1) whether the subject properties constitute parcels of land consisting of at least 40 acres, 2) whether the subject properties constitute forest land, 3) whether the subject properties are used to produce

tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, 4) whether the subject properties are subject to a forest management plan, and 5) whether the subject properties are farms or ranches.

1) Parcel

First, the Board will consider the meaning of the term "parcel of land" in the statute. Petitioner contends that the entire Granby Ranch property of approximately 5,000 acres is one functional parcel. In contrast, Respondent contends that every assessor's schedule number represents a parcel.

According to the Supreme Court in *Clarke*, this Board must determine whether the subject properties are segregated parcels that should be treated as single units or whether the subject properties are part of an integrated larger whole. *Clarke* at 722. This is a factual determination, controlled by "whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a larger unit or whether it is a parcel segregated by geography or type of use from the balance of the unit." *Id.*

This Board's focus should be on the "functional" parcels and the Board should take into account the physical characteristics of the subject properties. *See Clarke* at 722. This Board should also take into account the use of the subject properties as they either integrate or conflict with the larger property. *Id.* The taxpayer's subjective intent to use the land is irrelevant, rather, the actual use of the land must be the focus. *Clarke* at 723.

The larger Granby Ranch property incorporates multiple uses: a ski resort, golf course, developed and undeveloped platted residential subdivisions, and both forested and non-forested land. Also, some land within the Granby Ranch property has been sold to non-related parties. The Board concludes that Petitioner's claim that the entire Granby Ranch property is one functional forest agricultural land parcel is not supported by the varied uses.

The Board finds that Respondent's interpretation of the term "parcel" as the land defined by the unique legal description covered by each assessor's schedule number is too narrow because it does not consider the use of the land and the possibility that multiple schedule numbers might constitute a functional unit. The Board concludes that each defined subgroup of the subject property must be examined to determine the use of the land and if it can reasonably be construed to be part of a larger functional parcel. In this case, the Board concludes that undeveloped forested land within Granby Ranch may be considered one or more larger functional units. Only a portion of the larger Granby Ranch property is the subject in this case, so the Board has not made a determination regarding the number of functional parcels that might exist. Based on Mr. Edward's testimony, the MUs are devised merely as an organizational tool, so the Board is not convinced that MUs should determine parcels.

Petitioner contends that lots, roadway, and recreation open space tracts within developing subdivisions qualify as forest agricultural land because of physical contact with the larger functional unit. The Board disagrees.

The Board acknowledges that *Clarke* involved ranching, not forest agriculture. However, the Board believes that the *Clarke's* discussion of the meaning of parcel and focus on the use of the land is applicable to this matter.

As in *Clarke*, the Board is most concerned with the use of the various areas and whether they act as a larger functional parcel relating to forest agriculture. The Board concludes that a developed subdivision constitutes a change in use that is not consistent with forest agricultural land. Though the lots and tracts may have trees, the land has changed to a residential use. The still vacant developed lots, roadways, and recreation open space areas in those subdivisions are part of or used to support the residential use of that land, not the preservation of the nearby forest. The interpretation that the subdivision roads and ribbons of open space separating residential lots are qualifying forest land is not supported by the functionality of their greater subdivision.

2) Forest Land

Next, the Board addresses the forest land qualification. Forest land is defined as follows:

> [L]and of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide. Section 39-1-102(1.6)(a)(V)(4.3), C.R.S.

Because the Forest Plan was developed before the subdivision platting that began in 2006, the plan does not specify the number of forested and non-forested acres for the majority of the current schedule numbers. The Board concludes that the land included in Filings 6, 10, and 11 meets the ten percent minimum forest land required by the statute.

3) Production of Tangible Wood Products

The third question is whether the properties produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit. Evidence supports Petitioner's claim that under the Forest Plan, logging, thinning, and removal of fallen trees (also known as "treating") does occur on various portions of the larger Granby Ranch property and that wood products are sold to a mill. Petitioner did not disclose the net income from the sale of wood products, but testimony indicated that this activity has not produced a profit in recent years.

Respondent argues that all of the tree removal activity is too minor to meet the test of producing tangible wood products for the primary purpose of obtaining a monetary profit and that production did not occur on every schedule number. Petitioner contends that the work completed is according to the annual work plan approved by the state forest service.

The Board acknowledges that the Forest Plan prescription of treating a total of 262 acres (approximately 11 percent) over the ten-year plan period out of the approximate 5,000-acre Granby Ranch property is not a large number. However, the statute does not define how much tangible wood product must be produced, the frequency of production, how much profit must be realized, if a net profit must be proven each year, or at all. While the Board acknowledges that minimal production occurred, the Board does not believe there is some threshold that Petitioner has to meet in order for production of tangible wood products to occur. Also, the Board does not find any requirement for production to occur on every schedule number, as asserted by Respondent. Accordingly, the Board finds that production of tangible wood products occurred on the Granby Ranch property.

4) Forest Management Plan

The next question is whether the properties are subject to a forest management plan, defined as follows:

> [A]n agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. Section 39-1-102(1.6)(a)(V)(4.4), C.R.S.

The Board's conclusion is that the 2001 Forest Plan, encompassing the larger Granby Ranch property, includes all the properties covered in this petition. However, most of the schedule numbers listed in the Forest Plan have been changed since, some multiple times, as a result of Petitioner's development activities. The Board finds that none of the subject property schedule numbers is listed in the Forest Plan. Further, the Board finds that the CSFS letter to the Assessor recommending properties for forest agricultural classification shows "Sol Vista" as the property owner and the attached list of tax identification numbers is taken directly from the 2001 Forest Plan which does not show the 2008 schedule numbers for any of the subject properties. The Board concludes that the plain language of Section 39-1-102(1.6)(a)(V)(4.4), C.R.S., which states that [n]o property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service, is clear and binding. The Board concludes that Petitioner did not meet this requirement.

5) Ranch or Farm

Lastly, the Board must determine if the subject properties are a ranch or farm. The Board has relied on testimony and the state forest service recommendation of the larger Granby Ranch property as qualifying for forest agricultural land classification in concluding that the subject properties are not used as a farm or ranch.

The Board also specifically rejects Respondent's assertion that correct zoning is a requirement for forest agriculture because zoning is not mentioned in the plain language of Section 39-1-102(1.6)(a), C.R.S.

Application to the Areas

The Board finds that the incorrect owner name, Sol Vista, and incorrect property identifications appeared in the report by the CSFS, which is contrary to the requirements listed in Section 39-1-102(1.6)(a)(V)(4.4), C.R.S. The Board finds that the subject properties are not subject to the forest management plan because the incorrect owner name and incorrect property identifications were submitted. Accordingly, not all five prongs of Section 39-1-102(1.6)(a), C.R.S. are satisfied, and Petitioner does not qualify for forest agriculture.

Even if the Board found that the subject properties were subject to the forest management plan, the Board does not find that the other prongs in Section 39-1-102(1.6)(a), C.R.S. were satisfied, as detailed, per filing, below.

With respect to Granby Ranch Filing 6, the Board finds that the use of the land has changed to an improved residential subdivision and although the lot at issue may technically be connected to other land in the larger Granby Ranch property, the use of this property is no longer forest agriculture. Therefore, the Board concludes that the land covered by the Filing 6 schedule number 304378 does not qualify for forest agricultural classification for tax year 2008.

With respect to Granby Ranch Filing 10, the Board finds that the use of the land has changed to an improved residential subdivision and, although the lots at issue may technically be connected to other land in the larger Granby Ranch property, the use of this property is no longer forest agriculture. Therefore, the Board concludes that the land covered by the Filing 10 schedule numbers does not qualify for forest agricultural classification for tax year 2008.

With respect to Granby Ranch Filing 11, the Board finds that the use of the land has changed to a residential subdivision with partial improvements and, although the lots at issue may technically be connected to other land in the larger Granby Ranch property, the use of this property is no longer forest agriculture. Therefore, the Board concludes that the land covered by the Filing 11 schedule numbers does not qualify for forest agricultural classification for tax year 2008.

Vacant Land Valuation Issue:

Petitioner's Contentions

Petitioner contends that, in the event the Board determines that any of schedule numbers are ineligible for forest land agricultural classification, the values for those properties as vacant land have been improperly determined. Specifically, Petitioner contends that present worth discounting (PWD) has not been applied properly. The sale prices of lot sales located in Granby Ranch subdivisions used as comparable sales in the Assessor's analysis were not properly adjusted for the $10,000.00 Amenity Fee included in the price of all Granby Ranch lots. Secondly, Respondent has improperly determined the absorption period applied in the PWD used. When determining the historical absorption rate to the subdivisions, the Assessor did not treat the other subdivisions as part of the same competitive environment, but rather applied the absorption rate separately to each subdivision. Further, Petitioner contends that Filing 11 qualifies for PWD, but it was not applied by Respondent. Petitioner contends that the Assessor's errors relative to the PWD and Amenity Fees render the actual values assigned to those lots incorrect.

Petitioner provided testimony by Mr. Harris that all Granby Ranch lot sales include a $10,000.00 Amenity Fee that is payable to the Headwaters Metropolitan District and Granby Ranch Metropolitan District. The recorded Amenity Fee Agreement establishes the Amenity Fee Payment. The one-time fee provides the buyer free ski days, discounted lift tickets, advance tee time reservations at the golf course, free and discounted rounds of golf, advance reservations and discounted overnight fees at River Camp, and discounted fishing rod fees. Mr. Harris testified that the Amenity Fee runs with the land. Evidence was provided showing the fee on closing statements. Petitioner contends that evidence of the Amenity Fee Payment can also be found for each lot by locating the "Partial Release of Lien" recorded for each lot sale upon the sale from Granby Realty Holdings to an end consumer. Petitioner cited the following excerpt from the ARL to support its claim that deducting the Amenity Fee as nonrealty value is required: "By removing all nonrealty items, deductions are made to comparable properties' unadjusted selling prices (UASP) to achieve the correct real property market value, or actual value of the real property." ARL, Vol. 3, pg. 4.7.

Petitioner contends that making that deduction will lower the sale prices of the comparables used and will result in a lower value for the subject lots.

Respondent's Contentions

With respect to the Amenity Fee, Respondent contends that to be an allowable deduction for residential real or commercial/industrial property, the Amenity Fee must be part of the sale price unless either "separate consideration paid for personal property is submitted as shown on the contract of sale or the closing or settlement documents" or "evidence of such separate consideration is shown on the declaration filed pursuant to the provisions of section 39-14-102." *See* Section 39-13-102(5)(a) and (b), C.R.S. Such evidence, as prescribed by Section 39-13-102(5)(a) and (b), must be submitted to the county assessor. Section 39-13-102(5)(c) C.R.S.

Mr. Weydert testified that the Amenity Fee was deducted from lot sale prices as a nonrealty item if it was disclosed on the TD-1000 document at the time of sale to reflect the real property market price. Mr. Weydert testified that if the fee was not disclosed on the TD-1000 documents at the time of sale for the comparables used in the valuation of the subject properties, no deduction would be made. Respondent did not receive closing statements and had to rely on the TD-1000s as the official source for disclosure of nonrealty items included in the sale price of a property.

With respect to the PWD absorption rate used, Respondent contends that the developer discount has been properly applied. Per the ARL, each approved subdivision plat or competitive environment needs its own calculation. The ARL further describes competitive environments as being "[E]stablished 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, pg. 4.14.

Mr. Weydert's appraisal report shows that the absorption rate estimate was based on lot sales from Granby Ranch Filing 3 during the base period for tax year 2008. The absorption rate and PWD calculations were provided in Respondent's exhibits.

Board Conclusions

With regard to the Amenity Fee (the "Fee") claim, the Board finds that this issue might apply to all of the properties included in this case. The Amenity Fee Agreement ("the Agreement") states that the Fee is "for the acquisition, financing, leasing, construction, replacement, operation, maintenance and repair of the Amenities and the Developer is willing to subject the property to such fees." Resp't Ex. 3, Yellow Tab 4, ¶ D. The amenities include, but are not limited to, a golf course, ski area, river park and related improvements, trails, and other recreation improvements, facilities, appurtenances and rights-of-way. *Id.* at ¶ C. Further, the Agreement states that nothing obligates the developer to convey, lease, or otherwise contract for any specific amenities. *Id.* The purpose of the Fee "is to entitle certain minimum use and enjoyment of the Amenities to the owners and purchasers of homes and homesites within the Property, and certain persons not resident within the Property." *Id.* at ¶ E. The Fee, initially established at $10,000.00 per dwelling unit is to be collected on a one-time basis for each lot or parcel of land within the Granby Ranch Metropolitan District. *See generally Id.* at ¶ 3. Out-of-district users may, at the option of the Headwaters Metropolitan District, pay the Fee or another amount that may be determined, to also receive the priority access to the recreation amenities. The Fee constitutes a valid, perpetual lien on and against the property until paid in full. *Id.* at ¶ 4.

In deciding whether to deduct the Amenity Fee, the Board must determine whether the Fee serves as a nonrealty item. ARL, Vol. 3, p. 4.7. The Board has relied on the following definition for nonreality item(s): "items, other than land and improvements, which have value and are reflected in the sales price of a property. Nonrealty items may include, but are not limited to, personal property, trade considerations, unfulfilled contractual agreements, and unassigned development rights. Ad valorem valuation requires that a deduction for any nonrealty items be made to a confirmed sale prior to further market adjustment for financing, time, and physical characteristics, § 39-1-103(8)(f), C.R.S." ARL, Vol. 3, p. 4.30 (citing Section 39-1-103(8)(f), C.R.S. as follows: "Such true and typical sales shall include only those sales which have been determined on an individual basis to

reflect the selling price of the real property only or which have been adjusted on an individual basis to reflect the selling price of the real property only.")

The Board finds that the Fee does not purchase an ownership interest in the amenities or a membership. The Fee entitles the purchaser to priority access, some discounted fees, and a limited amount of free usage as determined from time to time by the Headwaters Metropolitan District. Petitioner provided closing statements for some, but not all the lot sales used by Respondent as comparable sales showing a $10,000.00 Amenity Fee along with other closing statement fees. Petitioner's lot sales documents were also presented showing that the developer had paid the Fee for some lots, but others were paid by the buyers of the lots. The Board is not convinced by the evidence and testimony presented that the priority access and unspecified monetary benefits from periodic reduced or waived usage fees falls within the nonrealty list. Also, evidence was not presented to prove that all of the comparable sales used by Respondent in the valuation of the subject lots included the Fee. The Board concludes that Petitioner failed to prove that a deduction for the Fee is justified in this case.

In determining the PWD issue, the Board has relied on the procedures listed in the ARL. *See generally* ARL, Vol. 3, Ch. 4. The Board finds that absorption rate calculation is required for each plat.

Based on both parties' testimony, Respondent's appraisal documents, and the other exhibits admitted into evidence, the Board concludes that Filing 6 does not qualify for PWD. According to the ARL, a test of applicability of PWD is that less than 80 percent of the buildable lots, tracts, sites, or parcels within the approved plat have been sold. In the case of Filing 6, the lot sales exceeded 80 percent as of January 1, 2008. The Board concludes that Filings 10 and 11 do qualify for PWD because lots sales in both filings are below the 80 percent threshold.

The Board concurs with Respondent that the ARL requires a separate absorption calculation for each approved subdivision plat. The Board finds that the Assessor's appraisals of Filings 10 and 11 included PWD. The Board concludes that Respondent's application of PWD for Filings 10 and 11 was executed in accordance with the ARL guidelines.

ORDER:

The petition to classify the subject properties as forest agricultural land is denied for the Assessor's schedule numbers included in Filing 6, Filing 10, and Filing 11.

The petition claiming that the valuation of any of the subject properties not granted agricultural vacant land classification is incorrect based on the Amenity Fees and the application of PWD 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 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 26th day of August 2011.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Louesa Maricle

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

Milla Crichton

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

54334

DOCKET 54334 - ADDENDUM			
Grand County Schedule No.	Description	Lot/Tract	Land Area (Acres)
304378	Granby Ranch Filing 6	35	0.360
306763	Granby Ranch Filing 10	4	0.796
306764	Granby Ranch Filing 10	5	0.656
306765	Granby Ranch Filing 10	6	0.689
306767	Granby Ranch Filing 10	8	0.842
306775	Granby Ranch Filing 10	16	0.617
306779	Granby Ranch Filing 10	20	0.605
306780	Granby Ranch Filing 10	21	0.609
306781	Granby Ranch Filing 10	22	0.608
306782	Granby Ranch Filing 10	23	0.605
306783	Granby Ranch Filing 10	24	0.609
306798	Granby Ranch Filing 10	39	0.967
306800	Granby Ranch Filing 10	41	0.638
306801	Granby Ranch Filing 10	42	0.774
306803	Granby Ranch Filing 10	44	0.796
306806	Granby Ranch Filing 10	47	0.872
306808	Granby Ranch Filing 10	49	0.687
306809	Granby Ranch Filing 10	50	0.710
306810	Granby Ranch Filing 10	51	0.803
306811	Granby Ranch Filing 10	52	0.803
306812	Granby Ranch Filing 10	53	0.720
306695	Granby Ranch Filing 11	2	0.300
306696	Granby Ranch Filing 11	3	0.391
306698	Granby Ranch Filing 11	5	0.310
306703	Granby Ranch Filing 11	10	0.315
306704	Granby Ranch Filing 11	11	0.323
306705	Granby Ranch Filing 11	12	0.302
306706	Granby Ranch Filing 11	13	0.308
306707	Granby Ranch Filing 11	14	0.370
306708	Granby Ranch Filing 11	15	0.310
306709	Granby Ranch Filing 11	16	0.310
306710	Granby Ranch Filing 11	17	0.318
306711	Granby Ranch Filing 11	18	0.390
306714	Granby Ranch Filing 11	21	0.322
306715	Granby Ranch Filing 11	22	0.321
306716	Granby Ranch Filing 11	23	0.321
306717	Granby Ranch Filing 11	24	0.682
306718	Granby Ranch Filing 11	25	0.710
306719	Granby Ranch Filing 11	26	0.812
306720	Granby Ranch Filing 11	27	0.739
306721	Granby Ranch Filing 11	28	0.734
306722	Granby Ranch Filing 11	29	0.754
306723	Granby Ranch Filing 11	30	0.761
306724	Granby Ranch Filing 11	31	0.636
306725	Granby Ranch Filing 11	32	0.986
306726	Granby Ranch Filing 11	33	0.889
306727	Granby Ranch Filing 11	34	0.849
306728	Granby Ranch Filing 11	35	0.849
306729	Granby Ranch Filing 11	36	0.851
306730	Granby Ranch Filing 11	37	1.450
306731	Granby Ranch Filing 11	38	0.896

306732	Granby Ranch Filing 11	39	1.206
306733	Granby Ranch Filing 11	40	1.010
306734	Granby Ranch Filing 11	41	1.010
306735	Granby Ranch Filing 11	42	1.273
306736	Granby Ranch Filing 11	43	0.803
306737	Granby Ranch Filing 11	44	0.828
306738	Granby Ranch Filing 11	45	0.806
306739	Granby Ranch Filing 11	46	0.783
306740	Granby Ranch Filing 11	47	0.758
306741	Granby Ranch Filing 11	48	0.758
306742	Granby Ranch Filing 11	49	0.836
306743	Granby Ranch Filing 11	50	0.743
306744	Granby Ranch Filing 11	51	0.751
306745	Granby Ranch Filing 11	52	0.673