

<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>DIANE LUPPENS,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 54702</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 Luppens. Respondent was represented by Christina Hooper, Esq. Petitioner is protesting the 2007 and 2008 actual values of the subject property.

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

As a preliminary matter, Petitioner moved to dismiss the hearing on grounds that the Eagle County Commissioners did not render a decision within the required six-month period of Petitioner's request for a reduction in value, citing Sections 39-1-113(1.7) and 39-1-101.5, C.R.S. The Board proceeded with the hearing on the merits of the case. The Board now concludes that neither Section 39-1-113(1.7), C.R.S. nor Section 39-10-114, C.R.S. (which provides remedies in abatement cases), authorize the Board to dismiss this matter on the grounds that Respondent did not render a decision within the six month time-frame. Accordingly, the Board denies Petitioner's Motion to Dismiss.

Subject property is described as follows:

**239 Bucktail, Gypsum, Colorado  
Eagle County Schedule No. R057657**

The subject property consists of a vacant residential lot situated in the Brightwater Club Subdivision. The lot contains a total of 1.324 acres. Streets and utilities were in place as of the date of the appraisal.

Petitioners are requesting an actual value of \$100,000.00 for the subject property for tax years 2007 and 2008. Respondent assigned a value of \$320,480.00 for the subject property for tax year 2007 and \$339,180.00 for tax year 2008.

Petitioner presented four comparable sales ranging in sale price from \$159,000.00 to \$228,000.00 and in size from 2.00 to 4.05 acres. No adjustments were accomplished.

Mr. Carl Luppens, representing the Petitioner, testified the subject development called Brightwater opened in 2005; that it was initially projected to contain 1,000 acres, 500 lots, an eighteen-hole golf course, ponds, a clubhouse, lake house and other improvements amenities. He testified that only the front nine-hole golf course was completed and that as of January 1, 2008, the project had been abandoned by the developer. He testified that Petitioner purchased the subject lot September of 2006 for \$384,600.00. The purchase of the lot included membership in the golf club for an additional fee of \$63,000.00. He testified that Petitioner overpaid on the lot purchase and that the lot has a salvage value of \$70,000.00. During questioning by the Board, Mr. Luppens testified that as of the appraisal date of June 30, 2006 he was not aware of any loan defaults and no tax payment delinquencies by property owners. He testified that Petitioner, at the time of lot purchase, was promised that subdivision amenities would be developed in the future. He testified that lot sales in the subdivision needed to be properly recorded. He had testified in his opening statement that land fraud had occurred concerning sales in the Brightwater Subdivision; that the initial sales prices were improperly inflated. He testified that he brought this situation to the attention of Eagle County but they didn't accept his objections. Mr. Luppens testified that the highest and best use of the subject lot is no longer as a residential lot because of the collapse of the residential lot market in the subdivision.

Mr. Luppens presented four comparable sales from other subdivisions in the Gypsum area. He accomplished no adjustments but testified that an adjustment should be accomplished for differences between the subject lot and the comparable sales in lot size. He relied upon these four sales to conclude a value for the subject lot of \$100,000.00.

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.

Petitioner is requesting a 2007 and 2008 actual value of \$100,000.00 for the subject property.

Respondent presented a value of \$390,000.00 for the subject property based on the market approach.

Respondent's appraiser, Ms. Dixie Kozinski, presented five comparable sales ranging in sale price from \$353,100.00 to \$403,500.00 and in size from 1.224 to 1.647 acres. No adjustments were made and the sales range was unchanged.

Ms. Kozinski testified that, as of the appraisal date of June 30, 2006, the construction of the eighteen-hole golf course, the Lake House and the Gate House was completed. She testified that Brightwater Club Subdivision is an exclusive gated residential community designed for custom-quality residences. Her opinion on the highest and best use of the subject lot is for residential development. She testified that the comparable sales that she applied to derive the value estimate were confirmed through the Eagle County Assessor's property declarations and sales verification letters. She also discussed the comparable sales with the buyers and sellers. She testified that she deducted \$50,000.00 for golf course membership from each comparable sale price to reflect the net sale price attributable to the purchase of the lot. She testified that her comparable sales were arm's-length transactions. She testified that Petitioner's comparable sales included sales from non-golf course and non-amenity subdivisions with tract-quality residences.

Respondent assigned an actual value to the subject property of \$320,480.00 for tax year 2007 and \$339,180.00 for tax year 2008.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax years 2007 and 2008.

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 five comparable sales in location, lot size, access, neighborhood amenities and infrastructure. All five sales were located in the subject subdivision and in the same general area as the subject. They were all located in the same block and on the same street as the subject lot. The five comparable sales sold between April 11, 2006 and May 23, 2006, and prior to the appraisal date of June 30, 2006. Ms. Kozinski concluded highest and best use, as presently improved, is as a single-family residential lot in a developing residential subdivision. The five 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

