

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHMOND AMERICAN HOMES INC.,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 55028</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 1, 2010, Diane M. DeVries and Karen E. Hart 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.

The Board consolidated Dockets 55028 and 55030 for purposes of the hearing only.

Subject property is described as follows:

Douglas County Schedule No. R0472962+128

The subject properties consist of 129 vacant lots in the Meridian International Business Center subdivision, located south of Lincoln Avenue: 59 lots in Filing 7A and 70 lots in Filing 7B.

Petitioner contends that Respondent did not recognize a decreasing market, used a base period of 24-months versus the 18-month period set in statute, and included partially complete properties in its absorption analysis. Respondent contends the market was not decreasing, a 24-month study period is allowable and partially improved properties do not qualify for subdivision discounting.

Petitioner is requesting an actual value of \$2,708,478.00 for the subject properties for tax year 2009. Respondent assigned a value of \$6,104,172.00 for the subject properties for tax year 2009 but is recommending a reduction to \$5,733,982.00.

Petitioner's witness, Todd J. Stevens of Stevens & Associates, testified that in Douglas County during the 18-month base period ending June 30, 2008, single-family building permits were down, foreclosure filings were up, new home prices were down, builders were in trouble, and duress sales were setting the market. Therefore, he believed the market was in severe trouble and Respondent did not recognize the negative market trend.

Mr. Stevens presented three comparable sales ranging in sale price from \$45,599.00 to \$110,000.00 and in size from 8,715 to 16,988 square feet. After adjustments were made for time, location and lot size, the sales ranged from \$45,599.00 to \$52,700.00. Mr. Stevens concluded to a value, before discounting, of \$50,000.00 per lot.

Mr. Stevens next determined a 15-year absorption period for Filing 7A, and a 14-year absorption period for Filing 7B. He applied a 14% discount rate to both filings and arrived at a Present Worth Discount (PWD) value of \$20,474.00 per lot for Filing 7A and \$21,436.00 per lot for Filing 7B.

Mr. Stevens testified that Respondent used a 24-month base period rather than the 18-month period for its absorption analysis and did not use any 2008 sales.

Regarding Respondent's Exhibit A, Mr. Stevens testified that Comparable Sale 1 backs to open space. Comparable Sales 2 and 3 are located in the Pinery, a golf course community. Comparable Sale 4 is located in a golf course community with larger lots. Comparable Sale 5 is a golf course community with beautiful views of the Flatirons and Roxborough areas. The sales are superior to the subject sites, and Respondent made no adjustments to the sales for these differences.

Petitioner is requesting a 2009 actual value of \$2,708,478.00 for the subject properties.

Respondent's witness, Virginia K. Wood, a Certified Residential Appraiser with the Douglas County Assessor's Office presented a value of \$5,733,982.00 for the subject properties based on the income approach.

For Filing 7A, Ms. Wood presented five comparable sales ranging in sale price from \$95,000.00 to \$103,000.00 and in size from 0.176 acres to 0.29 acres. The subject lots range from 0.126 acres to 0.226 acres in size. Ms. Wood determined a base value, before discounting, of \$87,000.00. Ms. Wood used a 12-year sell-out period and a 14% discount rate to arrive at an actual value of \$41,038.00 per lot.

Ms. Wood testified that the subject Filing 7A was not recorded until November 30, 2006 and had no absorption until the last ten months of the study period. Filing 7B was not recorded until November 21, 2006 and did not have any absorption until the last 13 months of the study period. Ms. Wood referenced page 46 of Exhibit A, which were the Division of Property Taxation guidelines for calculating absorption rates in subdivisions, such as the subject properties, which began selling lots after the beginning of the data collection period. She followed these guidelines to calculate her absorption rates.

There were no single lot sales within Filings 7A and 7B as of the June 30, 2008 appraisal date; sales that occurred in the subdivision were typically bulk lot sales to home builders. Ms. Wood testified that bulk sales usually reflect a discount, and they are considered to set the lower end of value. Ms. Wood noted that the bulk sales within the development sold for \$87,300.00 per lot, which was higher than the subject properties' base value of \$87,000.00. She made no adjustments to any of the comparable sales for physical characteristics to arrive at the base value.

For Filing 7B, Ms. Wood presented five comparable sales ranging in sale price from \$95,000.00 to \$103,000.00 and in size from 0.176 acres to 0.29 acres. These are the same sales used for Filing 7A. The subject lots range from 0.14 acres to 0.20 acres in size and 20 lots back to greenbelt areas. Ms. Wood determined a base value before discounting of \$87,000.00. Ms. Wood used a 10-year sell-out period and a 14% discount rate to arrive at an actual value of \$45,380.00 per lot. An adjustment of 15% was applied to the base value for all subject lots that back to greenbelt areas; the adjustment was determined using a paired sale analysis of sales that occurred in 2005 and 2006. Ms. Wood determined an actual value of \$52,187.00 per lot for the 20 greenbelt lots.

Ms. Wood noted that the bulk sale within Filing 7B sold for \$87,000.00 per lot, the same value as the subject properties' base value of \$87,000.00. She made no adjustments to any of the comparable sales for physical characteristics to arrive at the base value. Based on her analysis, Ms. Wood believes the subject lots in Filing 7B are undervalued.

Ms. Wood testified that the Douglas County Assessor's Office policy is to use a 24-month study period rather than an 18-month period. Every sale in Douglas County was analyzed. No time adjustments were made as the market was flat; there was no decline in the market during the base period. Ms. Wood pointed out that the volume of sales went down but the sales prices did not. Ms. Wood testified that the comparable sales are located in golf course communities, but they are public golf courses. She made no adjustments to the sales for size or location as there was insufficient market data available to support an adjustment.

Regarding Petitioner's sales, Ms. Wood testified that Comparable Sale 1 was part of a bulk sale involving mortgage fraud and is located in a dead subdivision. The infrastructure in place was funded with bonds that were still outstanding at the time of sale. The cost of the bonds will be passed on to future purchasers. Also, there is no support for Petitioner's time or size adjustments.

Regarding the determination of which type of sales to use to determine sellout, Ms. Wood referred to page C-6 of Exhibit C, a page from the Assessor's Reference Library (ARL) that states in part:

Only sales or long-term leases of lots to "end users" reduce the vacant land inventory and therefore, count toward the 80 percent sellout thresholds. "End users" are those parties who intend to, are expected to, or have done one of the following: i. Construct improvements on the vacant lots for themselves or have begun construction of improvements, such as speculative homes, for others.

Ms. Wood believes Petitioner did not apply PWD properly according to the ARL guidelines. Only vacant lots can be included in the developer's inventory.

Respondent assigned an actual value of \$6,104,172.00 for the subject properties for tax year 2009 but is recommending a reduction to \$5,733,982.00.

Sufficient probative evidence and testimony was presented to prove that the subject properties were incorrectly valued for tax year 2009.

Regarding the full market value of the subject lots prior to discounting, the Board concludes that Respondent's sales are appropriate, no time adjusted is warranted, and that the size and location differentials were adequately addressed through Respondent's qualitative analysis. Petitioner's vacant land sales are not persuasive as they include a bulk sale lot involved in mortgage fraud and the size and time adjustments are not adequately supported.

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 gathering period, Respondent's standard policy using a 24-month study period is contrary to statute. An expansion of the data gathering 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 gathering period scattered throughout Exhibit A to be contrary to statute and misleading. An example is on page 4 of Exhibit A: "Real property for the tax year 2009 *must* be valued utilizing the level of value *for the period of 24 months* immediately prior to July 1, 2008." *Emphasis added.*

However, Respondent provided testimony and evidence to show that a 24-month study period was necessary to determine the market value of the subject properties as an inadequate number of comparable sales were available from the 18-month period. Respondent's use of 24 months in the market value analysis necessitated the same 24-month study period for the absorption analysis. In accordance with the ARL, "[t]he period of time used for calculation of the absorption rate is based on the data collection period from the beginning date of the collection period to the appraisal date." ARL Vol. 3 4.16(2).

After careful consideration of all the evidence and testimony presented, the Board concludes that no further reduction in value is warranted below Respondent's recommended value.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject properties to \$5,733,982.00.

The Douglas County Assessor is directed to change his/her records accordingly.

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 this 25th day of February 2011.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Karen E Hart

Karen E. Hart

MAILED this 4 day of March 2011.

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

Amy Bruins
Amy Bruins

