

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 55030

Petitioner:

RICHMOND AMERICAN HOMES, INC.,

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

ORDER

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 Nos. R0449566+244

The subject properties consist of 245 vacant lots in The Meadows subdivision, in the town of Castle Rock: 5 lots in Filing 15, 52 lots in Filing 16, and 188 lots in Filing 18.

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 \$4,790,336.00 for the subject properties for tax year 2009. Respondent assigned a value of \$8,936,481.00 for the subject properties for tax year 2009.

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 four comparable sales ranging in sale price from \$75,000.00 to \$130,000.00 and in size from 17,960 to 27,094 square feet. After downward adjustments were made for time and for lot size, the sales ranged from \$50,000.00 to \$70,200.00. Mr. Stevens concluded to a value, before discounting, of \$50,000.00 per lot.

Mr. Stevens next determined a two-year absorption period for Filing 15, an eight-year absorption period for Filing 16, and a twenty-year absorption period for Filing 18. He applied a 14% discount rate to all filings and arrived at a Present Worth Discount (PWD) value of \$41,166.00 per lot for Filing 15, \$28,993.00 per lot for Filing 16, and \$16,558.00 per lot for Filing 18.

Mr. Stevens testified that he did not consider sales absorbed after the base period or sales of properties with partial building construction. Mr. Stevens believes Respondent's witness incorrectly included these sales in his analysis, and therefore, Respondent's absorption analysis is skewed. Additionally, Respondent mistakenly included a transaction that was an in-house sale, sales that were not to an end user, and bulk sales.

Mr. Stevens testified that Respondent used a 24-month base period rather than the 18-month period for its absorption analysis, did not use any 2008 sales, and made no adjustment to the comparable sales for size, even though the sales were three times the size of the subject lots.

Petitioner is requesting a 2009 actual value of \$4,851,201.00 for the subject property.

Respondent presented a value of \$9,155,998.00 for the subject property based on the market approach.

Respondent's witness, Steven W. Campbell, a Certified Residential Appraiser with the Douglas County Assessor's Office, testified that he tried to bracket his sales for size. There was a lack of available data to determine what a size adjustment should be, which was why he determined that the subject property value should be less than the larger lot sales. Mr. Campbell made no adjustments to any of the comparable sales to arrive at a base value. 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.

For Filing 15, Mr. Campbell presented seven comparable sales ranging in sale price from \$97,500.00 to \$130,000.00 and in size from 0.228 acres to 0.645 acres. The subject lots range from 0.17 acres to 0.18 acres in size, and all are located on a greenbelt. Mr. Campbell performed a qualitative analysis and concluded to a value, before discounting, of \$95,000.00. Mr. Campbell used a two-year sell-out period and a 14% discount rate to arrive at an actual value of \$89,950.00 per lot.

For Filing 16, Mr. Campbell presented seven comparable sales ranging in sale price from \$97,500.00 to \$130,000.00 and in size from 0.228 acres to 0.645 acres. These are the same sales used in the Filing 15 analysis. The subject lots range from 0.127 acres to 0.291 acres in size, and ten lots back to greenbelts. Mr. Campbell performed a qualitative analysis and concluded to a value, before discounting, of \$85,000.00. Mr. Campbell used a five-year absorption period and a 14% discount rate to arrive at an actual value of \$67,116.00 per greenbelt lot and \$58,362.00 per lot for the non-greenbelt lots.

For Filing 18, Mr. Campbell presented seven comparable sales ranging in sale price from \$97,500.00 to \$130,000.00 and in size from 0.228 acres to 0.645 acres. These are the same sales used in the Filing 15 and Filing 16 analyses. The subject lots range from 0.102 acres to 0.352 acres in size, and seventeen lots back to greenbelts. Mr. Campbell performed a qualitative analysis and concluded to a value before discounting of \$85,000.00. Mr. Campbell used a nineteen-year absorption period and a 14% discount rate to arrive at an actual value of \$33,700.00 per greenbelt lot and \$29,304.00 per lot for the non-greenbelt lots. Mr. Campbell testified that he did not use the bulk lot sales that occurred in Filing 18 and that bulk sales would be the floor for the indicated value of the subject properties.

Mr. Campbell concluded to a total value for all of the subject property lots of \$9,155,998.00 for tax year 2009.

Mr. Campbell testified that the same length of time must be used for absorption as is used for valuation. They use a 24-month period, as it captures more sales and captures two full years with all seasons.

Mr. Campbell testified that the first test for a lot to qualify for PWD is that the lot be vacant; if not vacant, they are considered absorbed. The Assessor's staff inspected each lot to see if it was vacant and also relied on the Town of Castle Rock's building permit data. Lots with a foundation in place are not considered vacant, and whether they sold is not relevant for the absorption period calculation; it is only relevant that they are no longer vacant and an improvement is started. Improved sales were counted for the absorption calculation but not for the land valuation analysis. Mr. Campbell 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.

Mr. Campbell pointed out that although Petitioner's sales had median lot sizes that were twice the subject lot sizes, the sales price was not twice as much and Petitioner's 25% size adjustment was not warranted. Petitioner's Filing 15 Comparable Sales 1 and 2 were non-qualifying sales, as they were purchased together by a single purchaser and negotiated as one sale and the seller was under duress. Regarding Petitioner's time adjustment, Mr. Campbell testified that the market did not take a large decrease in value until after the level of value date of June 30, 2008, with major

events regarding the financial crisis and housing decline occurring after that date. No time adjustment was warranted for the base period, and Petitioner's paired sales time trended analysis is based on a difference in sales price due to a multiple lot same purchaser sale, which skewed the analysis.

Regarding Petitioner's absorption analysis, Mr. Campbell testified that Mr. Stevens incorrectly used only closed sales in his analysis.

Respondent assigned an actual value of \$8,936,481.00 to the subject property for tax year 2009.

Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly 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 differential is addressed through Respondent's qualitative analysis. Petitioner's vacant land sales are not persuasive, as they include a multiple lot sale 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 for the purposes of capturing two full years with all seasons 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, "The 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.

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 this 25th day of February 2011.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries
Diane M. DeVries
Karen E Hart
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

