

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROCKING HORSE PARTNERS LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 55367 and 57384</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 16, 2011, MaryKay Kelley and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2009 and 2010 actual values of the subject property.

The parties agreed to combine the docket numbers for efficiency.

Subject property is described as follows:

**Raw Land and Vacant Land
Rocking Horse 1 & 2 and adjacent metes and bounds parcels
Douglas County Schedule Numbers R0471962+513 and R0471962+474**

The subject property consists of 506 parcels in Rocking Horse 1 and Rocking Horse 2 and 10 metes and bounds parcels. 109 parcels in Rocking Horse 1 are finished and are divided into small large lots. Rocking Horse 2 includes 269 parcels that are platted and approved but without horizontal improvements.

Petitioner is requesting an actual value of \$12,363,583.00 for the subject property for tax year 2009 and \$11,685,478.00 for tax year 2010.

Rocking Horse subdivision is a planned community with recreational amenities including parks, trails, open space, community swimming pools, tennis courts and neighborhood parks and playgrounds.

Petitioner's witness, Todd Stevens, a registered appraiser and a licensed broker, provided a consultation report. Mr. Stevens presented nine comparable sales ranging in sale price from \$68,000.00 to \$110,000.00 and in size from 9,932 to 20,473 square feet. The same sales were used in the analysis of both the small lots and the large lots.

Mr. Stevens determined an average size of 9,424 square feet for the small lots. Each of the comparables was adjusted downward for time and for location. All of the comparables except sale number nine were adjusted downward for larger size. The time adjustment applied was a negative 1.5% per month. Locations were adjusted downward from 10% to 15% and size adjustments were applied ranging from 0% to 20%. Mr. Stevens pointed to his comparable number two, a property that had sold in January 2007 for \$115,000.00 and then resold in March 2008 for \$105,000.00, as supportive of his declining market adjustment. He testified the remaining adjustments were based upon appraiser experience. The concluded value was \$55,000 per lot.

The large lots averaged 19,751 square feet and were adjusted in the same manner for time and for location. Upward adjustments for size ranged from 5% to 10% with no adjustments made to sales number three and four. The concluded value was \$72,000 per lot.

Present worth of the lots was determined by application of an absorption period of 23 years discounted at 14%. The present worth of a representative small lot was determined to be \$16,242.00 and a large lot to be \$21,262.00.

Rocking Horse 2 has approvals for 265 residential lots. Mr. Stevens presented two comparable sales from Arapahoe County ranging in sale price from \$257,100.00 to \$1,680,000.00 and in size from 12.07 to 70 acres. No adjustments were made to the sales and a value of \$19,602.00 per acre was concluded.

Both parties agreed there was no argument with the values determined for the metes and bounds parcels. Mr. Stevens concluded to a total value for 128 finished single family lots and 376 undeveloped lots and 10 metes and bounds parcels of \$12,363,583.00 for 2009. Using the same comparables but applying the concluded values to 88 finished single family lots and 377 undeveloped lots and 10 metes and bounds parcels, Mr. Stevens concluded to a total value of \$11,685,478.00 for 2010.

Respondent assigned a value of \$14,924,374.00 for the subject property for tax year 2009 and \$14,032,112.00 for tax year 2010.

Respondent's witness, John E. Whitley, a licensed appraiser, presented an appraisal report. Mr. Whitley also considered the property within the same classifications.

Small lot sales were considered on the basis of a median size of 0.218 acres. Five comparable sales were presented ranging in sale price from \$95,000.00 to \$103,000.00 and in size from 0.176 to 0.290 acres. Sale one and sale five were adjusted downward for greenbelt locations. After adjustments were made the sales ranged from \$82,600.00 to \$103,000.00 per lot. Based on

comparison with the median price of an improved home from each comparable's subdivision a land allocation was determined for each comparable from 18.8% to 27.5%. Mr. Whitley concluded to a median adjusted sale price of \$96,900.00 per lot and to a market value of \$78,000.00. \$78,000.00 represents 24% of the median improved sale price within the subject development and is also the value determined by the county's mass appraisal process.

The large lots were considered based on a median size of 0.415 acres. Mr. Whitley presented four comparable sales ranging in sale price from \$115,000.00 to \$135,000.00 and in size from 0.370 to 0.499 acres. No adjustments were applied and a median adjusted sale price of \$125,900 was determined. Mr. Whitley concluded to a market value of \$125,000.00 based upon allocation of 28% to the median improved sale price determined in the subject subdivision.

Present worth of the lots was determined by application of an absorption period of 23 years discounted at 14%. The present worth of a representative small lot was determined to be \$23,033.00 and a large lot to be \$36,319.00.

For the raw land Mr. Whitley presented four comparable sales ranging in sale price from \$1,545,000.00 to \$13,743,000.00 and in size from 30 to 288.3 acres. No adjustments were made to the sales and a range of \$42,524.00 to \$49,329.00 per acre was determined. Mr. Whitley concluded to a market value of \$40,000.00 per acre based upon the previously assigned value by the county. Using a formula of total acres to lots (times) value of raw land per acre (divided by) total lots a raw land per lot value of \$10,790.00 was determined for 109 undeveloped lots in Rocking Horse 1 and a raw land per lot value of \$8,640.00 was determined for 269 undeveloped lots in Rocking Horse 2.

Mr. Whitley concluded to a total value for 128 finished single family lots and 378 undeveloped lots and 10 metes and bounds parcels of \$14,924,374.00 for 2009. Using the same comparables but applying a 22-year absorption period he concluded to values of 88 finished single family lots and 377 undeveloped lots and 10 metes and bounds parcels to \$14,032,112.00 for 2010.

Petitioner contends the Assessor failed to take into account deteriorating market conditions, market sales in the area and raw land sales in the area. Petitioner pointed to comparable number two, a property that had sold in January 2007 for \$115,000.00 and then resold in March 2008 for \$105,000.00 and questions why Respondent chose to consider only the January, 2007 sale and ignore the March, 2008 transaction. Petitioner also questions why sales from 2008, as presented within their report, were not used by Respondent.

Petitioner also questions why Respondent applies a 24-month research period when there are adequate comparables within the 18-month period, questions Respondent's contention that the locations of the comparables are similar to the subject, and disputes Respondent's description of Douglas County as having a generally sound economy that improved in the period from 2002 to 2008.

Respondent contends data from 760 transactions within the data gathering period have indicated a relatively level market using statistical modeling. Respondent's appraiser indicates he did not confirm the March, 2008 transaction referenced by Petitioner and did not rely upon it for that

reason. Petitioner's comparable sales used in the lot valuations were subject to such large adjustments that they were unreliable and Respondent also contends the preponderance of downward adjustments indicates a lack of comparability. Respondent also questions Petitioner's reliance upon articles and media reports as the basis for an overstated negative time adjustment.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2009 and 2010. The Board was persuaded by Petitioner's position regarding the sale and resale of sale two in their report and the contention that the subject location in the northerly portion of the county with a toll road as the primary access is less desirable.

The Board supports Respondent's position that Petitioner's adjustment process has resulted in overly large adjustments that are predominantly negative. The Board questions the lack of sales within 2008.

Petitioner's Exhibit A, pages 30-3 and 30-4, contains the MLS brochure for Petitioner's sale two. The brochure indicates this property was placed on the market on April 27, 2007, only three months after the January, 2007 purchase at \$115,000.00. The asking price at that time was \$130,000.00 and the property was on the market for 308 days before the final sale at \$105,000.00. Petitioner's witness indicated he had confirmed both transactions but provided no indication why the property was purchased and then placed on the market at virtually the same time. The Board has determined the decline between January, 2007 to the March, 2008 sale to be 0.62% per month, significantly less than the adjustment applied by Petitioner.

Respondent's Subdivision Comparison Table within Exhibit 1 demonstrates a difference between the median improved sale price of a small lot in the subject development and the comparable locations to be from 7.6% (sale 2 & 3) to 11.4% (sale 4). Sale five has a median price more than 37% greater than the subject, a difference so large it suggests it is not comparable. Respondent's larger lots within the Subdivision Comparison Table show median improved sales prices from 23% less than sale three and four to prices 20% more. The two indications essentially cancel each other and lend no support to a location adjustment. The above is supportive of no more than a 10% locational adjustment.

Petitioner's lot sales also call into question the size adjustments applied. Petitioner's sale two and sale three are reported as equal in location and they sold within one month of each other yet sale three, the larger of the two, sold for 35% less than sale one. A similar comparison between sale six and seven indicates the larger lot sold for over 13% less than the smaller.

The Board has applied a declining market adjustment of 0.6% per month, location adjustments of 10% and no more than a 10% size adjustment to Petitioner's small lot comparables. The adjusted indications have a range from \$52,768.00 to \$82,111.00 with an average of \$71,674.00 and a median of \$76,220.00. A unit value of \$75,000.00 per small lot is adopted.

The large lot comparables were adjusted in a similar manner resulting in a range from \$59,364.00 to \$97,860.00 with an average value of \$84,163.00 and a median of \$88,140.00. A unit value of \$85,000.00 is adopted.

The large lot comparables were adjusted in a similar manner resulting in a range from \$59,364.00 to \$97,860.00 with an average value of \$84,163.00 and a median of \$88,140.00. A unit value of \$85,000.00 is adopted.

The present worth analysis is then applied to the adjusted selling prices as follows:

PRESENT WORTH ANALYSIS: 2009	
Adjusted Selling Price:	\$75,000.00
Absorption Period:	23
Discount Rate:	14%
Present Worth of \$1 Factor:	6.792056
Adjusted Sale Price per Year:	\$3,261
Present Worth of a Small Lot:	\$22,148

PRESENT WORTH ANALYSIS: 2009	
Adjusted Selling Price:	\$85,000.00
Absorption Period:	23
Discount Rate:	14%
Present Worth of \$1 Factor:	6.792056
Adjusted Sale Price per Year:	\$3,696
Present Worth of a Small Lot:	\$24,101

PRESENT WORTH ANALYSIS: 2010	
Adjusted Selling Price:	\$75,000.00
Absorption Period:	22
Discount Rate:	14%
Present Worth of \$1 Factor:	6.742944
Adjusted Sale Price per Year:	\$3,409
Present Worth of a Small Lot:	\$22,987

PRESENT WORTH ANALYSIS: 2010	
Adjusted Selling Price:	\$85,000.00
Absorption Period:	22
Discount Rate:	14%
Present Worth of \$1 Factor:	6.792056
Adjusted Sale Price per Year:	\$3,864
Present Worth of a Small Lot:	\$24,054

The Board cannot agree with Petitioner's estimate of raw land value. Petitioner's appraiser related only two sales, one with 70 acres and a second with 12.07 acres. The first sale closed in August 2008, outside of the valuation date, and the second has little similarity to raw land parcels that range from 58 to 71 acres. Respondent's sales were considered in light of the time adjustment and location adjustments applied in the previous analysis. Respondent's sales one, two and three bracket the raw lot sizes and, after adjustments, show a value range from \$30,694.00 to \$35,872.00.

A value of \$35,000.00 per acre is best supported. On this basis, the 109 lots in Rocking Horse 1 would have a per lot value of \$9,441.00 and the 269 lots in Rocking Horse 2 would be \$7,560.00.

The Board has applied the present worth indications as follows:

2009 SUMMARY		
93 Lots	\$22,148 each	\$2,059,764
35 Lots	\$24,101 each	\$843,535
109 Lots Rocking Horse 1	\$9,441 each	\$1,029,069
269 Lots Rocking Horse 2	\$7,560 each	\$2,033,640
10 Metes & Bounds Parcels	\$12,000 per acre	\$7,990,080
TOTAL:		\$13,956,088

2010 SUMMARY		
57 Lots	\$22,987 each	\$1,310,259
31 Lots	\$24,054 each	\$745,674
109 Lots Rocking Horse 1	\$9,441 each	\$1,029,069
269 Lots Rocking Horse 2	\$7,560 each	\$2,033,640
10 Metes & Bounds Parcels	\$12,000 per acre	\$7,990,080
TOTAL:		\$13,108,722

The Board concluded that the 2009 actual value of the subject property should be reduced to \$13,956,088.00

The Board concluded that the 2010 actual value of the subject property should be reduced to \$13,108,722.00

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$13,956,088.00

Respondent is ordered to reduce the 2010 actual value of the subject property to \$13,108,722.00

The Douglas County Assessor is directed to change their 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 and MAILED this 13th day of October, 2011.



BOARD OF ASSESSMENT APPEALS:

Handwritten signature of MaryKay Kelley in cursive script.

MaryKay Kelley

Handwritten signature of Gregg Near in cursive script.

Gregg Near

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

Handwritten signature of Milla Crichton in cursive script.
Milla Crichton