

<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>ACS RETIREMENT LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 60175 &amp; 60176</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on October 22, 2012, Debra A. Baumbach presiding and Diane M. DeVries reviewing. Mr. Michael Westall, Manager, appeared pro se on behalf of Petitioner. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2011 actual value of the subject properties.

Subject properties are described as follows:

**4912 Crow Drive, Larkspur, Colorado  
Douglas County Schedule No. R0016071**

**4885 Red Rocks Drive, Larkspur, Colorado  
Douglas County Schedule No. R0478155**

The subject properties consist of two vacant land sites located in the Perry Park Subdivision in Douglas County. The subdivision contains building sites consisting of mostly one acre parcels. The topography and terrain range from gentle to steep sloping, numerous rock outcroppings, native grasses, pine and oak trees. The subject site located at 4912 Crow Drive is a flat, wooded, single family site with utilities available to the front of the site. The subject site located at 4885 Red Rock Drive is a sloping site with rock outcroppings to the rear of the site and paid tap fees. This site is located on one of the main access roads in the development. The site used to be encroached by a fence line which was removed pursuant to a court order. However, subsequently to the removal of the encroaching fence, the subject's borders were adjusted and the subject's size was decreased by 755 square feet.

Petitioner is requesting an actual value of \$39,000 for Schedule No. R0478155 and \$75,000 for Schedule No. R0016070. Respondent assigned a value of \$82,450 for Schedule No. R0478155 and \$95,000 for Schedule No. R0016070.

Petitioner's witness, Mr. Westall, Manager of ACS Retirement LLC, contended that Respondent has overvalued the subject sites by not considering the sales of the subject sites that took place during the base period. Mr. Westall contends that although the property at 4912 Crow Drive was acquired on May 21, 2009 at a Douglas County Treasurer's sale, and the property at 4885 Red Rocks Drive was acquired on July 27, 2009 by Public Trustees Deed, both of the sites were acquired during the relevant base period and therefore should be considered in the valuation process.

Mr. Westall also presented a market approach referencing five comparable sales. The sales ranged in sales price from \$68,500 to \$97,500 and in size from .9 acres to 1.05 acres. No adjustments were made for any differences in physical characteristics. Mr. Westall concluded to a value of \$75,000 for Schedule No. R0016070 and a value of \$39,000 for Schedule No. R0478155.

Mr. Westall testified there are issues with both sites. The site located at 4912 Crow Drive is a flat, wooded lot with utilities available at the road. This site has no views and backs up to other lots. The site located at 4885 Red Rock Drive is sloping with rock outcroppings to the rear. It has available utilities to the site. It is located on the main road in the development and was subject to an adverse possession of 755 square feet. There is only approximately 60% of usable area.

Mr. Westall argued that Respondent has valued the sites at the upper end of the market and did not consider the effects of the adverse possession, differences in location, and views. Both sites have been listed for sale with no interest in them from potential buyers. Mr. Westall argued that considering these various issues, the subject values should be lowered.

Respondent's witness, Ms. Virginia K. Wood, Certified Residential Appraiser with Douglas County Assessor's Office, presented an indicated value of \$95,000 for each site using the market approach. Respondent presented three comparable sales ranging in sales price from \$90,000 to \$97,100 and in size from 0.90 acres to 0.911 acres. No adjustments were made to any of the sales and Ms. Wood correlated to the median range for the sites.

Ms. Wood testified that she selected sales within the 18 month base period. The sales were all arms-length transactions and were considered the most similar to the subject. They bracket the subject sites in various features. The subject sites as well as the comparable sales are all buildable sites. The subject site located at 4885 Red Rocks Drive does not have paid tap fees and all of Respondent's comparable sales do not have paid tap fees. There were no adjustments made as the sales were very similar, and if any adjustment were to be made, it would be an upward adjustment as none of the comparable sales had paid tap fees.

Ms. Wood testified that no further adjustments were made to account for the encroaching fence line. At the narrowest section of the site, including all necessary setbacks, the ability to build is not impeded. Also, there are other sites in the development with similar site setbacks. The assigned value for this site is at the lower end of the range.

Ms. Wood testified that subject sales were excluded in the valuation process as they both were non-arms length transactions. The Assessor's Reference Library outlines guidelines for qualified sales to be used in the valuation process and the sale of the subject sites through a tax lien and a trustee's deed warrants them disqualified.

Respondent assigned an actual value of \$82,450 for Schedule No. R0478155 and \$95,000 for Schedule No. R0016070 for tax year 2011.

Respondent presented sufficient probative evidence and testimony to show that the subject properties were correctly valued for tax year 2011.

Both parties used three of the same sales and neither party made adjustments for any differences. The Board concurred that Respondent's comparable sales were similar to the subject properties and represented market conditions in the area. Petitioner did not present sufficient probative evidence to dispute Respondent's argument that the property located at 4885 Red Rock Drive is not adversely affected by an encroaching fence line. The Board was convinced that the encroachment does not impede the ability to build. The Board also concluded that the encroachment did not have an adverse effect on the overall marketability.

The Board concludes that Respondent correctly applied the Assessor's Reference Library's guidelines for the selection of suitable sales. The sales of the subject sites do not meet the criteria for arms-length transactions and do not represent market value and therefore should be excluded from the analysis.

**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).

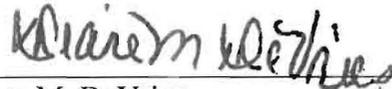
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 20th day of November, 2012.

**BOARD OF ASSESSMENT APPEALS**

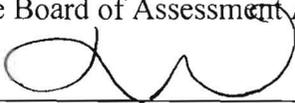


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Diane M. DeVries



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Debra A. Baumbach

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



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Milla Crichton

