

<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>ROCKING HORSE PARTNERS LLC ET AL &amp; LENNAR COLORADO LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.:</b> <b>60559,61655 &amp; 61661</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 25, 2013, James R. Meurer and Debra A. Baumbach presiding. Petitioners were represented by Richard G. Olona, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioners are protesting the 2011 and 2012 actual values of the subject properties.

Docket Nos.: 60559, 61655 & 61661 were consolidated for the purposes of the hearing.

Subject properties are described as follows:

**Rocking Horse 1 and 2 Subdivisions  
Douglas County Schedule Nos.:**  
**R0471962 + 416 (tax year 2011)**  
**R0471962 + 24 (tax year 2012)**  
**R0471986 + 377 (tax year 2012)**

The subject property is located in the Rocking Horse 1 and 2 Subdivisions (herein after "Rocking Horse"), which are in the northeastern part of Douglas County, east of the Town of Parker.

For tax year 2011, in dispute are the values of 343 undeveloped lots and 62 finished single family lots located within Rocking Horse. For tax year 2012, the parties dispute the values of 343 undeveloped lots and 54 finished single family homes. Initially, Petitioners' appeal also included several metes and bounds parcels located outside of Rocking Horse; the values of those parcels, however, were agreed upon by the parties during the hearing.

Petitioners are requesting a value of \$10,221,670 for tax year 2011 and \$3,453,297 for tax year 2012. Respondent has assigned an actual value of \$13,463,339 for tax year 2011 and \$6,259,723 for year 2012.

Petitioners' witness, Mr. Todd J. Stevens, with Stevens & Associates Cost Reduction Specialists, Inc., testified that the subject property was raw land acquired through eight multi-phase takedowns that began in 2005 and finalized by the end of 2007. The entire project was purchased for \$20,000,000. According to Mr. Stevens, market conditions during the valuation period ending June 30, 2010 were challenging, single family building permits were down, and foreclosure sales were prevalent within the market.

Mr. Stevens applied the market approach to derive an indicated value for each individual finished lot, prior to discounting. The lots were broken out into two groups; Group One consisting of the smaller lots with an average lot size of 0.253 acres and Group Two consisting of the larger lots with an average lot size of 0.461 acres.

For Group One, Mr. Stevens presented eight comparable lot sales from the base period ranging in sales price from \$25,000 to \$85,000 per lot and in average size from 0.150 acres to 0.370 acres. Adjustments were made for location, size and characteristics. After adjustments were made, the sales prices ranged from \$22,500 to \$51,000 per lot. Mr. Stevens concluded to a value of \$35,000 per lot.

Mr. Stevens then completed a present worth analysis for the smaller lots for each tax year separately. For 2011, he applied an absorption period of 10 years; a discount rate of 15%; and a present worth factor of 5.018769 (Present Value of \$1 per period aka ordinary level annuity) to derive a present worth value per lot of \$17,566.00 for tax year 2011. For 2012, Mr. Stevens applied an absorption period of 9 years, a discount rate of 15%; and a present worth factor of 4.771584 to derive a present worth value per lot of \$18,556.

For Group Two, Petitioners' witness performed the same analysis, presenting seven individual finished lot sales from the base period ranging in sales price from \$25,000 to \$99,000 per lot and in average size from 0.240 acres to 1.220 acres. Adjustments were made for location, size and characteristics. After adjustments were made, the sales prices ranged from \$23,750 to \$64,350 per lot. Mr. Stevens concluded to a value of \$45,000 per lot.

Mr. Stevens then completed a present worth analysis for the larger lots. For 2011, Mr. Stevens applied an absorption period of 10 years; a 15% discount rate; and a present worth factor of 5.01879 to derive a present worth value of \$22,584 per lot. For 2012, Mr. Stevens applied an absorption period of 9 years; a discount rate of 15%; and a present worth factor of 4.771584 to derive a value of \$23,858 per lot.

For the raw land value, Mr. Stevens again applied the market approach consisting of eight comparable raw land sales from the base period and the extended base period. The sales ranged in sales price from \$400,000 to \$5,856,000 and in size from 30.01 acres to 320 acres. Adjustments for condition of sale, location, size and physical characteristics were made. After

adjustments were made, the sales ranged from \$8,644 per acre to \$25,891 per acre. Mr. Stevens concluded to a raw land value per acre of \$15,000.

Petitioners are requesting a 2011 actual value of \$10,221,670 and \$3,453,297 for tax year 2012 for the subject property.

Respondent presented an indicated value of \$25,564,647 for tax year 2011 and \$17,886,605 for tax year 2012 for the subject property based on the market approach. However, the CBOE values for the subject property were lower; \$13,463,339 for 2011 and \$6,259,723 for 2012. Respondent acknowledged that the Board does not have jurisdiction to raise the subject values above those set by the CBOE.

Mr. Steven W. Campbell, Certified Residential Appraiser with the Douglas County Assessor's Office testified for Respondent. Mr. Campbell completed a market approach in deriving a raw land value. Mr. Campbell presented two comparable raw land sales. Sale One was 6.457 acres and closed on 12/28/2009 for \$2,663,100, or \$412,436 per acre, or \$54,349 per lot. Sale Two was 7.560 acres and closed on 12/18/2009 for \$2,400,000, or \$317,460 per acre or \$50,000 per lot. Both sales were located within the subject subdivision. Both sales had a negative time adjustment, and no other adjustments were made. Respondent concluded to a raw land value of \$51,642 per lot. Mr. Campbell stated that the \$51,642 per lot raw land value indication was significantly higher than the \$8,640 to \$40,150 actual values assigned by the Assessor in the mass appraisal process. However, the witness contended that his two sales were the most similar sales to support the raw land value of the subject because they shared similar entitlements, size, location and were both paper platted. Respondent contended that several of the sales used by Petitioners were located outside the Douglas County and did not share the same entitlements, indicating lower value ranges. Further, Mr. Campbell pointed out that the raw land's assigned value was well below the indicated value.

Mr. Campbell divided the subject lots into three groups; Small Finished Lots, Large Finished Lots and Unfinished Lots.

For the Small Finished Lots Group, Respondent presented five comparable lot sales, ranging in sales price from \$40,000 to \$76,704 and in size from 0.150 acres to 0.283 acres. Adjustments were made for time, size and location. After adjustments were made, the sales ranged from \$37,806 to \$73,725 per lot. Respondent concluded to a value of \$57,008 for the subject's 31 small finished lots.

Mr. Campbell then completed a present worth analysis for the Small Finished Lots Group. He concluded to an absorption period of 10 years and a discount rate of 15% was applied to derive a present worth value of \$28,611 for the interior lots and \$32,903 for the greenbelt lots – these values falling below the actual value of raw land.

The witness cited ARL Volume 3 1-89 Rev 1-11, pages 4.10, 4.10, stating that it was the assessor's responsibility to determine the appropriate raw land market level using similarly entitled raw land sales, to ensure that present worth value does not fall below raw land value. Because the present worth value of the subject accounts cannot fall below the actual value of the

most comparable raw land, Respondent's final opinion of value for the 31 smaller subject lots was concluded to be the same as the raw land value of \$51,642.

For the Large Finished Lots, Mr. Campbell presenting four comparable lot sales ranging in sales price from \$80,000 to \$100,000 and in size from 0.340 to 0.520 acres. After adjustments for time, size and location were made, the sales ranged from \$67,277 to \$77,520 per lot. Mr. Campbell concluded to a value of \$72,793 per lot. Respondent completed a present worth analysis for the larger lots using a 10-year absorption period and a discount rate of 15% deriving a value of \$36,533 per lot. As in the previous analysis for the smaller lots, the concluded value fell below the raw land value and Mr. Campbell concluded to the raw land value of \$51,642.

The last Group in Respondent's analysis, identified by Mr. Campbell as Unfinished Lots, consisted of 267 lots within Rocking Horse 2. Using the raw land analysis, Mr. Campbell concluded to the price of \$51,642 for platted but unfinished lots. The witness indicated, however, that the two sales used in the raw land valuation were for 48 and 49 lots and were located near existing street and utilities infrastructure. Considering the larger number of subject lots (267) in the Rocking Horse 2, and that some of the subject lots were farther from existing infrastructure, Mr. Campbell made a 25% adjustment concluding to an indicated value of \$38,731 per lot. Because the concluded value fell below the raw land value, Mr. Campbell concluded to the raw land value of \$51,642.

Respondent assigned a value of \$13,463,339 for tax year 2011 and \$6,259,723 for tax year 2012.

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 2011 and 2012.

The Board did not find that Respondent's witness presented reasonable support for a raw land value threshold based on utilizing only two sales from the same subdivision, involved in a multi-phase takedown. Respondent provided limited information as to the conditions of the sales that might affect the sales price to support a raw land threshold.

The Board finds that Petitioners' sales to be a better indication of market value in determining a raw land value. The Board was convinced a larger number of sales gives a better indication of market perception. Although Respondent argued he only used sales in Douglas Counties as opposed Petitioners' sales that included several sales from Adams and Arapahoe County, in selecting suitable sales for comparison, the ARL does not exclude using sales with similar entitlements from competitive areas outside the county.

In determining raw land value, the Board reviewed all the sales presented by both parties and placed most weight on Petitioners' sales 4, 5, 6 and 7. The Board agreed that Petitioners' sale 1 was bank owned and was given minimal weight. Sale 8 was also given minimal weight as this sale was not listed on the open market and the contract was entered into three years prior to the closing as reported by the listing broker. Sale 4 was reported as a liquidation sale and sales 6 and 7 were part of a 1031 exchange. The Board gave consideration to Respondent's argument that all of Petitioners' sales lack similar entitlements and sales 4, 6 and 7 could be considered

non-arms-length transactions. However, the Board was not persuaded by Respondent's argument refuting Petitioners' use of the sales. Respondent failed to provide persuasive evidence as to actual entitlements of Petitioners' sales and that Petitioners' sales 4, 6 and 7 were sold below market value. The ARL outlines selecting sales with similar size and development status. Sales are selected within an approved plat or competitive environment. Competitive environments are established for unplatted tracts only. A parcel or parcels of land should not be included in both an approved plat and a competitive environment. The ARL is clear that there are seldom sales exactly like the subject property and appropriate adjustments would need to be made.

Both parties included sales of bank owned lots in determining a market value for each of the finished lots, adjusting for differences and weighing each of the sales in comparability. The Board agrees that using sales of bank owned properties and giving them appropriate consideration is acceptable in the valuation process of raw land.

The Board was also persuaded by Petitioners' argument that the subject subdivision is located in a remote area that is far from service areas. The lots were flat with no trees or rock outcroppings requiring additional adjustments for differences. The Board gave secondary weight to Respondent's sales, concluding that they would need additional adjustments for location. Therefore the Board concluded to a raw land value threshold of \$18,000 per acre based on the median adjusted sales price of Petitioners' sales 4, 5, 6 and 7. The sales ranged from \$8,801 to \$25,891, with a median sales price of \$17,540 rounded to \$18,000 per acre.

In determining a raw land value, the Board reviewed all the sales presented by both parties and placed most weight on Petitioners' sales 4, 5, 6 and 7 as they share similar entitlements and were all arms-length transactions with exception of sale 4 that was involved in a liquidation sale. The Board finds Petitioners' sales 2 and 3 did not share similar entitlements and were given minimal consideration. Sale 8 was not listed on the open market and the sale contract was entered into three years prior to the closing as reported by the listing broker; minimal weight was given to this sale.

According to the ARL Volume 3, page 4.10 "Vacant land present worth actual value must never drop below the actual value of the most comparable raw, undeveloped vacant land as the appropriate level of value." Therefore, because the raw land value threshold falls below Respondent's raw land value and below the assigned value range, the subject qualifies for present worth discounting.

The Board gave consideration to all the sales presented by both parties as there were a larger number of sales supporting a broader market perception in valuing the finished lots. The Board gave most weight to Petitioners' sales and adjustments and secondary weight to Respondent's sales. The Board was not convinced that Respondent adequately adjusted its sales for differences in topography and location. The Board applied an additional 10% to Respondent's sales indicating a range of \$34,025 to \$66,352 with a median of \$49,688 for the smaller lots. Petitioners' adjusted sales ranged from \$22,500 to \$51,000 with a median value of \$36,718. The Board concluded to the upper end of the median range for a value of \$45,000 for the smaller lots. The Board applied the same present worth calculations used by both parties.

The Board applied an absorption period of 10 years for tax year 2011, discount rate of 15% and present worth factor of 5.018769 (Present Value of \$1 per period aka ordinary level annuity) for a present worth value of \$22,584. For tax years 2012, the Board applied the same lot value of \$45,000, an absorption period of 9 years, discount rate of 15% and present worth factor of 5.018769 for a value of \$23,857.

For the larger lots, the Board agreed a 10% adjustment should be applied to Respondent's sales. The sales ranged from \$60,549 to \$69,768 with a median of \$65,243. Petitioners' sales ranged from \$23,750 to \$64,350 with a median of \$45,639 and the Board concluded to the upper end of the median range for a value of \$60,000 for the larger lots. Again, the Board applied the same present worth calculations by both parties. The Board applied an absorption period of 10 years for tax year 2011, a discount rate of 15% and a present worth factor of 5.018769 for a value of \$30,112. For tax year 2012, the Board applied the same lot value of \$60,000 and absorption period of 9 years, a discount rate of 15% and a present worth factor of 5.018769 for a value of \$31,810. The Board's conclusions are as follows:

Raw land value	\$18,000 per acre
Present Worth small developed lots	\$22,584 per lot (2011)
Present Worth small developed lots	\$23,857 per lot (2012)
Present Worth large developed lots	\$30,112 per lot (2011)
Present Worth large developed lots	\$31,810.00 per lot (2012)

**ORDER:**

Respondent is ordered to reduce the 2011 and 2012 raw land value to \$18,000 per acre for the subject property. Respondent is ordered to reduce the 2011 actual value of the small lots to \$22,284 per lot and the large lots to \$31,112. Respondent is ordered to reduce the 2012 actual value of the small lots to \$23,857 and the larger lots to \$31,810. In the event the concluded value set by the CBOE is lower, than Respondent shall keep the value set by the CBOE.

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.

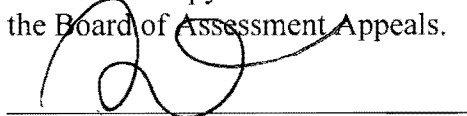
**DATED and MAILED** this 5th day of September, 2013.

**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
James R. Meurer

  
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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 Lishchuk

