

<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,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 63867</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 7, 2014, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**Rocking Horse Subdivision, Filings 1 and 2  
Aurora, Douglas County, Colorado  
Douglas County Schedule Nos. R0473459 + 382 lots per attached list**

The parties stipulated to the admission of Mr. Todd Stevens and Mr. John E. Whitley as experts, as well as the admission of Petitioner’s Exhibits 1 and 2, and Respondent’s Exhibits A and B.

The subject property consists of 383 residential lots located in the Rocking Horse Subdivision. There are 126 partially to fully-developed lots in Filing 1 and 257 platted and undeveloped lots in Filing 2.

Petitioner is requesting an actual value of \$2,556,651 for the subject property for tax year 2013. Respondent presented an appraisal report reflecting the 2013 value for the subject of \$14,052,847, but is deferring to the CBOE’s assigned value of \$9,692,538.

Petitioner presented the following indicators of value:

Cost:	Not Developed
Market:	\$2,556,651
Income:	Not Developed

Mr. Olona, attorney representing Petitioner, called Mr. Todd Stevens of Stevens & Associates Cost Reduction Specialists, Inc., as Petitioner's first and only witness. Mr. Stevens segregated the subject lots based on their respective locations in Filing 1 or Filing 2, in order to reflect the difference in level of development. Filing 1 lots were further defined by size, identified as Group 1 based on an average size of 10,097 square feet, and Group 2 with an average size of 19,543 square feet.

Petitioner's witness presented a market approach consisting of seven multi-lot sales, including sales from both Arapahoe County and Douglas County. The sales received various adjustments for location, size and characteristics. A 75% reduction was made to the indicated base lot values to reflect those lots that were only 25% developed.

The multi-lot sales ranged in price from \$33,333 to \$55,000 per lot prior to adjustment. They ranged in size from 0.146 to 0.244 acres and included between five and 90 lots.

After adjustments, the multi-lot sales indicated a range in value of \$30,000 to \$46,750 per lot for the smaller Group 1 lots. Based on slightly different size adjustments, the same sales indicated a value range of \$34,000 to \$55,000 for the larger Group 2 lots.

Mr. Stevens also presented four single lot sales for comparison with Group 1 sales. The single lot sales indicated a price per lot of \$45,000 to \$52,500 prior to adjustment. Three of the four sales were also compared to the subject's Group 2 lots.

After adjustment, the single lot sales indicated a range in value of \$33,600 to \$44,625 for the smaller Group 1 lots, and an adjusted range of \$38,400 to \$49,875 for the larger Group 2 lots.

Based on both sets of sales, Mr. Stevens concluded to a value of \$40,000 as a base lot value for Group 1 lots. For Group 2 lots, the base lot value was concluded to \$47,000 per lot. The value of those lots that were identified as only partially developed was concluded to \$10,000 for Group 1 lots and \$11,750 for Group 2 lots.

After developing the above conclusions, Mr. Stevens testified the subject was eligible under statute and the Assessor's Reference Library (ARL) guidelines for present worth discounting. To complete the discounting process, Mr. Stevens used a six year absorption period and a 13.5% discount rate and testified that these were the variables used by Douglas County at the Board of Equalization hearing. Mr. Stevens presented the following values for the subject lots:

Subject Area	Discounted Per Lot Value for Base Lots	Discounted Per Lot Value for Greenbelt Lots
Filing 1 Group 1	\$26,283	\$6,571
Filing 1 Group 2	\$30,883	\$7,721

A third set of sales was presented to value the 257 platted but undeveloped lots in Filing 2 comprising of 55.66 acres of land. Mr. Stevens presented eight comparable sales that ranged in sales price from \$10,354 to \$138,631 per acre prior to adjustment. The sales ranged in size from 8.6 acres to 132.36 acres. After adjustment, the sales indicated a range between \$8,801 and \$34,658 per acre. Mr. Stevens concluded to a value of \$18,000 per acre for Filing 2, which is equal to a value of \$3,898 on a per lot basis.

Based on the above, Mr. Stevens reconciled to a total value of \$2,556,651.

Respondent presented the following indicators of value:

Cost:	Not Developed
Market:	\$14,052,847
Income:	Not Developed

Ms. Van Horn, attorney representing Respondent, called Mr. John E. Whitley, a Licensed Appraiser with the Douglas County Assessor's Office as Respondent's first witness. Respondent categorized the subject as finished versus unfinished lots, identifying 29 lots in Filing 1 as finished, and the remaining 97 lots in Filing 1 and all 257 lots in Filing 2 as unfinished.

Respondent presented a market approach to value the subject's finished lots. Respondent's market approach comprised of two multi-lot (third sale was eliminated as unqualified during the hearing) comparable sales ranging in sale price from \$75,000 to \$80,000 per lot. The sales contained between two to 63 lots. After adjustments were made, the sales ranged from \$67,500 to \$96,000 per lot. Mr. Whitley concluded to a per lot value of \$70,000 for fully developed lots.

Mr. Whitley presented five sales for comparison with the subject's unfinished lots. The sales ranged in price from \$134,091 to \$423,476 on a per acre basis, prior to adjustment. They ranged in size from 3.884 to 9.061 acres. After adjustment, the sales indicated a value of \$147,500 to \$359,955 per acre for the subject. Mr. Whitley concluded to a value of \$147,500 per acre for the unfinished portion of the subject.

Mr. Whitley calculated the per-lot value of Filing 1 as \$39,529 based on the original acreage of 71.018 acres and the original number of lots in the Filing, at 265. The per-lot value of Filing 2 is calculated as \$31,862 based on the original acreage of 58.107 and 269 total lots.

Mr. Steven W. Campbell with the Douglas County Assessor's Office presented rebuttal testimony regarding Petitioner's comparable sales.

Respondent concluded to a value of \$14,052,847 for the subject property for tax year 2013 but is deferring to the CBOE's assigned value of \$9,692,538.

The primary difference between the parties' opinions of value rests in the sales used in their respective market approaches; the adjustments to those sales, particularly concerning the location; and, the determination if additional present worth discounting is necessary or if a discount is already implied in the prices indicated by the multi-lot sales.

Petitioner argues that its comparable sales (both multi-lot and single-lot) are most similar to the subject and the adjustments to those comparable sales are supportable within the market. Petitioner further argues that the sales prices of the comparable sales represent retail values and pursuant to statutory and the ARL guidelines, additional discounting must be employed.

Respondent argues that its two multi-lot sales already reflect discounted values, with no additional present worth deduction required. Respondent did not find that further consideration of present value discounting was required under ARL guidelines. Neither of the witnesses for Respondent could identify the amount of the discount implied in the comparable sales presented.

Pursuant to Section 39-1-103 (14)(c)(I), C.R.S., all vacant land is eligible for present worth discounting. The criteria for determining if present worth valuation is applicable, are:

1. The procedures are only applied to vacant land.
2. Less than 80 % of the buildable lots, tracts, sites, or parcels within an approved plat or competitive environment have been sold.
3. The absorption period of an approved plat or competitive environment is calculated to be more than twelve months.
4. The application of present worth valuation procedures produces a value greater than current raw land value.

ARL, Vol. 3 at Page 4.4.

While the market absorption rate must be taken into account when assessing vacant land, its use is not mandatory. *Resolution Trust v. Bd. of County Comm'rs.*, 904 P.2d 1363, 1365 (Colo. App. 1995). The court has previously identified a non-exclusive list of factors which indicate that the market absorption rate is not applicable, include "that the lots are not within a subdivision subject to an approved plat, or that the tracts are not sufficiently similar to be part of the same marketing area, or even that the lots within a subdivision subject to an approved plat are being held as open space, and not being actively marketed for development." *Id.*

The Board was convinced that the subject lots qualified for present worth discounting because (1) the subject is vacant land and (2) less than 80% of the buildable lots, tracts, sites, or parcels within an approved plat or competitive environment have been sold; (3) the absorption period is more than 12 months; and (4) the application of present worth valuation procedures produces a value greater than the raw land value. Furthermore, Respondent was not able to provide sufficient reasons why the present worth discounting was inapplicable.

The subject represents 383 lots, with build-out determined to be six years by both parties. While comparison with other multi-lot sales may be appropriate, it is important to identify sales that are comparable in size (number of lots) and in location. The Board concluded that the multi-lot sales presented by Respondent were far superior to the subject, particularly concerning location and number of lots sold, and Respondent's adjustments were inadequate. The same conclusions were made regarding Respondent's undeveloped land sales.

Based on the testimony and exhibits, the Board concludes that the single-lot sales used by Petitioner in its market approach were the most appropriate comparables to the subject, and sufficient to establish retail lot values for the subject. The adjustments to the comparable sales for location, size and physical characteristics were adequately supported through the testimony and exhibits (e.g. maps) provided by Petitioner. The concluded retail values were supported by the multi-lot values provided by Petitioner.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2013 valuation of the subject property was incorrect. The Board concludes that the 2013 actual value of the subject property should be reduced to \$2,556,651.

### **ORDER:**

Respondent is ordered to reduce the 2013 actual value of the subject property to \$2,556,651.

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-nine 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-nine days after the date of the service of the final order entered).

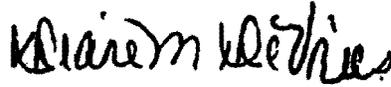
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 29th day of August, 2014.

**BOARD OF ASSESSMENT APPEALS**

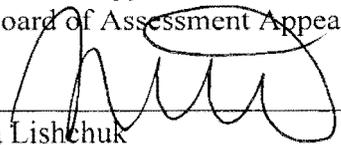


\_\_\_\_\_  
Diane M. DeVries



\_\_\_\_\_  
Sondra W. Mercier

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

  
\_\_\_\_\_  
Milla Lishchuk