

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHMOND AMERICAN HOMES OF COLORADO INC,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 78660</p>
<p>FINAL AGENCY ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals (“Board”) on December 10, 2020, Diane M. DeVries and Sondra Mercier presiding. Petitioner was represented by David M. McLain, Esq. Respondent was represented by Christopher McMichael, Esq. Petitioner is protesting the 2019 actual value of the subject property.

The Board consolidated Dockets 78660, 78663, and 78669 for purposes of the hearing only. Separate orders have been issued for each docket number.

EXHIBITS AND EXPERT WITNESSES

The Board admitted into evidence Petitioner’s Exhibits 1 and 2, and Rebuttal Exhibits 1-8. The Board admitted Respondent’s Exhibit A and Rebuttal Exhibit B. The Board admitted Todd J. Stevens, with Stevens & Associates Inc., and Pierre Lescano, Ad Valorem Appraiser with the Adams County Assessor’s Office, as expert witnesses.

DESCRIPTION OF THE SUBJECT PROPERTY

Prairie Farm Subdivision Filing No. 1 Adams County Schedule No. R0188878+43

The subject property is owned by Petitioner, Richmond American Homes of Colorado Inc. The subject includes 152 single-family residential lots in the Prairie Farms subdivision, located at the northwest corner of Walden Street and East 96th Avenue, Commerce City. The lots are fully developed and have an average of 5,845 square feet. (Exhibit. A, pg. 11.)

The subject property’s actual values, as assigned by the County Board of Equalization (“CBOE”) below and as recommended and requested by each party, are:

	Total Value
CBOE’s Assigned Value:	\$10,906,152
Respondent’s Recommended Value:	\$10,906,152
Petitioner’s Requested Value:	\$7,827,425

BURDEN OF PROOF AND STANDARD OF REVIEW

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor’s valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Commission*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of the BAA, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993).

The Board reviews every case de novo. See *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, a de novo proceeding before the Board “is commonly understood as a new trial of an entire controversy.” *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the board of equalization proceeding may be presented to the Board for a new and separate determination. *Id.*

APPLICABLE LAW AND AUTHORITATIVE SOURCES

Assessors are required to consider, and when applicable, to apply the present worth valuation procedure when using the market approach to value vacant land, § 39-1-103(14)(b), C.R.S.

Present worth valuation of vacant land involves discounting. Discounting is defined in *The Dictionary of Real Estate Appraisal, Sixth Edition, 2015*, published by the Appraisal Institute, as a procedure used to convert periodic income, cash flows and reversions into present value. Present value is based on the assumption that benefits received in the future are worth less than the same benefits received now. The objective is to determine the present worth, i.e., the actual (market) value, as of the appraisal date, of the vacant land - not its future value.

Discounting of vacant land establishes the present worth of vacant land that will not likely sell within one year. The reason for vacant land present worth valuation is to account for the time, in years, necessary to sell an inventory of vacant lots, sites, parcels, or tracts. “According to Colorado law, the present worth valuation of vacant land is synonymous with actual or market value.” 3 Div. of Prop. Taxation, Dep’t of Local Affairs, Assessors’ Reference Library Ch. 4 at 4.1 (rev. Jan. 2021).

The safe rate, management rate, and risk rate range are components of the discount rate provided by the Division of Property Taxation for statewide use. Considerations for illiquidity are accounted for in the safe and risk rates. Any differences in the rates should be completely documented. The composite discount rate for 2019-2020 is 10.00% to 15.00%.

Risk rate: The risk rate is the annual rate of return on capital, which is commensurate with the risk assumed by the investor. If appropriate, the risk rate is determined on an individual basis depending on each approved plat. Several factors should be considered when determining the risk rate to use in developing your appropriate discount rate.

- Absorption trends. A sharply declining trend indicates a slowing market that increases risk. Conversely, a strong increasing trend in absorption indicates an improving market with less risk.
- Building permit trends.
- Employment trends.
- Population growth trends.
- Mortgage interest rate trends.
- Availability of mortgage financing.
- Location of a property relative to the path of growth for the market.
- Affordability index – comparing projected pricing for a property to average household incomes in the competitive market area.
- Appeal compared to competitive properties.
- Current inventory of new and existing homes available for sale.
- Market time for sales of existing inventory.
- Governmental influences relating to the subdivision approval process.
- The proposed use of the land (especially considering the previously listed risk factors).

3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 4, Addendum 4-B, 2019-2020 Discount Rate Calculation.

The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

FINDINGS AND CONCLUSIONS

After consideration of the testimony and exhibits presented, the Board relies on the testimony of Todd J. Stevens, of Stevens & Associates, expert witness, and the sales comparison approach he used to determine the retail lot value that he presented in his consulting assignment, to find in favor of Petitioner.

I. Appraisal Methodology

After consideration of all three approaches to value, both parties determined the Unadjusted Selling Price (UASP) for individual lots, and both applied present worth discounting to determine the final actual value. Neither party denied that the lots qualified for present worth discounting.

The subject includes 152 individual residential lots located in a subdivision. The Board concurs that the prescribed approach best reflects the methodology that a typical buyer would use in determining market value for the subject lots.

The parties varied in their conclusion of UASP for individual lots and the discount rate applicable to the subject. The parties agreed that the appropriate absorption period was five years and the percentage of completion of lot development was 100%.

II. Sales Comparison Approach

The Board finds the conclusions reached in Petitioner's sales comparison approach credible. Mr. Stevens considered three sales located in Commerce City and Brighton, between 2 and 8 miles from the subject that he believed offered similar characteristics such as a location outside of the Denver core and within the influence of Denver International Airport (DIA). Mr. Stevens noted that the subject lots are within three miles of the western runway of DIA. (Rebuttal Exhibit 4.) The sales occurred between September 2017 and April 2018, and indicated a UASP range of \$75,000 to \$85,000. No adjustments were made to the sales, and Mr. Stevens concluded to a UASP of \$75,000 for the subject lots. (Exhibit 1, pgs. 6-7.)

Conversely, the Board was not persuaded by the conclusion of UASP reached by Respondent's approach. Four of Respondent's sales were located closer to Denver's central core, at 11 to 15 miles from the subject. (Rebuttal Exhibit 4.) Only sale 3 was located proximate to the subject; however, Petitioner confirmed that sale 3 reflected more than just site value as it included plans, engineering and soil test, with no adjustment made by Mr. Lescano. The Board was convinced that Respondent's sales 1, 2 and 5 were far superior for location, as they are all centrally located in the metro area. Petitioner provided evidence that showed that after sale 4 was purchased, the lot was subsequently split into two lots. Sale 4 is located one-block from the new light rail line, considered superior to the location of the subject lots.

The Board finds Petitioner's UASP of \$75,000 to be supported.

III. Present Worth Discounting

Both parties utilized the same absorption period and agreed to the level of development of the individual lots that are part of this appeal.

The discount rate is provided by the Division of Property Taxation for statewide use. The composite discount rate for 2019-2020 is 10.00% to 15.00%. *See* 3 Div. of Prop. Taxation, Dep't of Local Affairs, Assessors' Reference Library Ch. 4 Addendum 4-B, 2019-2020 Discount Rate Calculation. The discount rate is composed of a safe rate, management rate, and risk rate. Both the safe rate and management rate are not site dependent; however, the "risk rate" component is selected based on the specific risks associated with the subject development. The ARL provides a list of factors that could be considered in assessing specific risk to the subject development in the determination of the overall discount rate.

Respondent applied a discount rate of 13%, reporting that the subject represents a "moderate risk" development and presents moderate risk overall. Petitioner applied a higher rate of 14%, indicating that the subject represents a high-risk development citing the influence of Denver International Airport (DIA), airport noise, and the longer commute to central Denver.

Of the list of factors that could be considered, several are already reflected in the discounting process, namely the absorption trend and appeal compared to competitive properties. The Board finds that the concluded UASP of \$75,000, which was based on sales from a similar location, already reflects the influences of DIA, noise, and distance to central Denver, with insufficient evidence that there is additional risk to this development not already reflected in lot value. The Board accepts Respondent's discount rate of 13% as reasonable.

IV. Reconciliation

Based on the findings and conclusions presented, the Board finds that Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2019.

Based on a UASP of \$75,000, a discount rate of 13%, an absorption period of five years, and 100% development status, the Board concludes to a per lot value of \$52,758 for tax year 2019.

ORDER

The Board finds that Petitioner has met its burden of proving that the 2019 taxable value of the property is incorrect. Respondent is ordered to reduce the 2019 actual value of the subject property to \$52,758 per lot.

The Adams County Assessor is directed to change his/her records accordingly.

APPEAL RIGHTS

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.

See § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

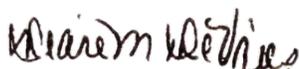
DATED and MAILED this 26th day of April, 2021.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:


Sondra W. Mercier

Concurring Board Member:


Diane DeVries
*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*

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

Yesenia Araujo

Yesenia Araujo

