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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>1600 WYNKOOP ASSOCIATES LTD.,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p> |  |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Barry Goldstein, Esq. Address: 950 S. Cherry Street, #320 Denver, Colorado 80246 Phone Number: (303) 757-8865 E-mail: Attorney Reg. No.: 2218</p> | <p>Docket Number: 39806</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on May 28, 2002, Karen E. Hart and Mark R. Linné presiding. Petitioner was represented by Barry J. Goldstein Esq. Respondent was represented by Steven Ford, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**WYNKOOP BUILDING CONDOS 02331 COMM
(Denver County Schedule No. 02331-12-023-023)**

Petitioner is protesting the 2001 actual value of the subject property, a five-story office and retail building. The office portion of the property is located on four floors above a parking garage, and the retail portion of the property is located on the first floor. The gross building area is 66,482 square feet, and the net rentable area is 62,074 square feet. The site contains 15,300 square feet and is zoned B-7.

ISSUES:

Petitioner:

Petitioner contends that the valuation of the subject property has been over-stated due to inappropriate application of operating expenses. Petitioner further asserts that the failure to adequately take into account the value ascribed to the parking garage by the Respondent has flawed its market approach.

Respondent:

Respondent contends that the assigned value is supported by application of the three approaches to value using data from the appropriate base period.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Steven Letman, MAI, CRE, Colorado Certified General Appraiser, presented the following indicators of value:

| | |
|---------|----------------|
| Market: | Not Presented |
| Cost: | Not Presented |
| Income: | \$4,337,000.00 |

2. The witness did not present a direct sales comparison or cost approach valuation for the subject property.

3. Petitioner's witness did present comparable sales that occurred during the applicable base year period, but did not conclude a value from this approach. The witness noted that it was difficult to find sales that were located at the fringe of downtown, such as the subject.

4. Petitioner's witness presented an income approach to derive a value of \$4,337,000.00 for the subject property.

5. Petitioner's witness presented a comparative analysis of the Respondent's income approach data to the subject property's actual income.

6. A rent roll from June 2000 was presented, which indicated an actual income of \$17.24 per square foot. This data was the basis of the consultation analysis that the witness performed.

7. The witness testified that actual income from June 2000 was presented, with modifications made for items such as replacement reserves.

8. The witness testified that the major flaw in the Respondent's analysis is their use of a percentage figure for the expenses. The actual expenses were higher than indicated by the Respondent's analysis.

9. The witness testified that the actual expenses were \$600,219.00 for the 1999 data included in the appeal. These expenses were stabilized and adjusted downward to \$7.50 per square foot.

10. The witness testified that the value as concluded via income analysis was the most appropriate.

11. Under cross-examination, the witness testified that he did not prepare an appraisal of the subject property, because the owner did not request that one be prepared.

12. Mr. Letman testified that a personal verification was not completed for the comparable sales. The information that was utilized and presented was based on data from Comps, Inc. He noted that the data was not used to establish a value for the subject. He further noted that he did not know the condition of the properties used in the consultation.

13. The witness testified that though he used properties scattered throughout the metro area, he was trying to find properties that were similar in age and size. This was the basis for his selection of the comparable sales.

14. In response to questions from the Board, the witness indicated that though not submitted, the 1999 Statement of Operating Expenses was similar to the December 2000 statement submitted into evidence.

15. In rebuttal testimony, Mr. Letman indicated that the best method for handling the parking garage would be to add the value of the subject's parking garage to the subject value, and then compare that total value against the sales included by the Respondent.

16. The witness provided testimony regarding the sales utilized by the Respondent, indicating that there were factors that rendered them less than appropriate for use in establishing the subject's value.

17. In examining the Respondent's income approach, the witness testified that using a percentage to determine the operating expenses is very dangerous, because a building with a \$10.00 per square foot rent in comparison to a building with a \$20.00 per square foot rent would have expenses that are twice as high in the second building vis-à-vis the first, when expenses could clearly not be twice as high.

18. Petitioner is requesting a 2001 actual value of \$4,337,000.00 for the subject property.

19. Respondent's witness, Mr. Carlos Gauna, Colorado Certified General Appraiser, and an appraiser with the Denver County Assessor's Office, presented the following indicators of value:

| | |
|---------|----------------|
| Market: | \$5,935,900.00 |
| Cost: | \$6,236,700.00 |
| Income: | \$5,162,500.00 |

20. Based on the market approach, Respondent's witness presented an indicated value of \$5,935,900.00 for the subject property.

21. Respondent's witness presented four comparable sales ranging in sales price from \$87.05 to \$113.91 per square foot and in size from 108,563 to 184,581 square feet. After adjustments were made, the sales ranged from \$87.84 to \$107.07 per square foot. Properties were examined in Lower Downtown and the fringe areas of the Central Business District.

22. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$6,236,700.00. The witness testified that while the cost approach was considered, it was not correlated to in the final value conclusion.

23. Respondent's witness used the income approach to derive a value of \$5,162,500.00 for the subject property.

24. The witness testified that a rent roll was not provided prior to the exchange period for the appeal to the Board of Assessment Appeals. For this reason, the data that he considered was based on information he adduced from data previously submitted.

25. The witness testified that as of the base period, the property was approximately 97% occupied.

26. The witness again reiterated that contrary to Mr. Letman's testimony, he was not provided the actual income and expense data prior to the exchange period.

27. Under cross-examination, the witness testified that he applied expenses that equated to \$5.13 per square foot for the subject. The 35% expense ratio he applied was based on comparable rentals. The witness agreed that the expense ratio meant that if rental rates were \$10.00 per square foot, then expenses would be applied in the amount of \$3.50 per square foot under the constraints of the pro-forma analysis. If rental rates were at \$20.00 per square foot, then expenses would be applied in the amount of \$7.50 per square foot.

28. The witness was unable to explain how utility rates could differ in buildings having different rental rates. He further testified that expenses could be the same in buildings achieving different rental rates.

29. The witness testified that the rental rate achieved by the subject would not change the expenses attributable to the elevator. He further admitted that insurance charges would not be different based on rental rates.

30. Mr. Gauna testified that administrative costs would remain the same, regardless of rent rate.

31. In re-direct testimony, the witness testified that calculating expenses on a square foot basis would be appropriate for fee appraisal, but for uniformity purposes, using a percentage is preferred in mass appraisal.

32. The witness testified that he had taken into account replacement reserves and tenant improvements in the 35% ratio he applied in his pro-forma analysis. He analyzed actual income and expenses, and based on this information, an even higher value could be expected. The witness noted that the expense data submitted by the Petitioner indicated expenses of approximately \$7.00 per square foot.

33. In response to questions from the Board, the witness testified that the net rentable area was based on data submitted to the Respondent in a previous appeal.

34. He could not comment on the actual income versus what was applied in his analysis, since he had never seen the income and expense data prior to the hearing.

35. In response to re-cross examination, the witness indicated that there was no specific breakout of the expenses constituting the expense ratio.

36. Respondent assigned an actual value of \$5,162,500.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board notes that while both parties provided comparable sales data, the sales comparables submitted and considered by the Respondent appear to demonstrate greater similarity to the subject, and based on the locational characteristics of these properties, are ultimately more persuasive.

3. The Board notes that the subject's operating statement does not include replacement reserves or tenant improvement costs. The Petitioner chose to utilize industry standards to adjust the actual expenses and include provisions for these items.

4. The lack of 1999 operating data is somewhat troubling, in that the use of only 2000 data includes income and expense information from beyond the close of the base period. The Board is further troubled that the 2000 information was not provided to the Respondent prior to the Rule 11 exchange period.

5. In examining the information presented by both parties, the Board finds itself in the position of examining an analysis of income from the Petitioner that is based on data not entirely germane without the consideration of 1999 data. Further, the data presented by the Petitioner does not conclude in a valuation, given that the Petitioner asserts that they have not presented a value. Contrapuntally, the Respondent, while providing an appraisal that considers all three approaches to value, relies on an income approach expense methodology that, while not inappropriate for mass appraisal analysis, lacks the precision of replicating the pro-forma income model that should be at the core of an appraisal completed for a single property.

6. Both parties have failed to convince the Board that their positions are correct and adduced from the available market data.

7. The Board gave most weight to Petitioner's "Revised Income Approach" in Petitioner's Exhibit A. The Board accepted Petitioner's Effective Gross Income calculation of \$965,420.00 and reduced the expenses to \$7.00 per square foot. The Board also accepted the undisputed capitalization rate of 11.5%.

8. After consideration of all the evidence and testimony presented, the Board concludes that the actual value of the subject property for 2001 should be reduced to \$4,600,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$4,600,000.00.

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 11 day of July, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Mark R. Linné
Mark R. Linné

This decision was put on the record

JUL 10 2002

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

Penny S. Bunnell
Penny S. Bunnell

