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<tr><td>BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO
1313 Sherman Street, Room 315
Denver, Colorado 80203
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Petitioner:

ONE UNION SQUARE II, LTD.,

v.

Respondent:

JEFFERSON COUNTY BOARD OF EQUALIZATION.</td><td></td></tr>
<tr><td>Attorney or Party Without Attorney for the Petitioner:

Name: Lawrence L. Levin, Esq.
Holme Roberts & Owen LLP
Address: 1700 Lincoln Street, Suite 4100
Denver, Colorado 80203
Phone Number: (303) 861-7000
Attorney Reg. No.: 1824</td><td>Docket Number: 39890</td></tr>
<tr><td colspan="2">ORDER</td></tr>
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THIS MATTER was heard by the Board of Assessment Appeals on April 17, 2003, Karen E. Hart and Debra A. Baumbach presiding. Petitioner was represented by Lawrence L. Levin, Esq. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

143 Union Boulevard, Lakewood, Colorado
(Jefferson County Schedule No. 183321)

Petitioner is protesting the 2001 actual value of the subject property, a 10-story office building. The subject was built in 1981 and consists of approximately 195,586 square feet.

ISSUES:

Petitioner:

Petitioner contends that the subject has been overvalued. The income and expense information relied upon in the income approach was taken from published sources. The Petitioner relied on actual income and expenses to derive an accurate income approach. The Respondent did not take into consideration the impact the restrictive covenants have on the subject property.

Respondent:

Respondent contends that the subject has been correctly valued for the base period. All three approaches to value were considered. The Respondent looked at published sources, as well as actual income and expenses. All factors affecting the subject were taken into consideration.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Thomas A. Arnold, Certified General Appraiser with Thomas A. Arnold and Associates, presented the following indicators of value:

Income: $12,200,000.00

2. Mr. Arnold testified that the sales comparison approach was considered and rejected as an indicator of value. Sales of large multi-tenant office buildings are unique and some of the information relied upon can be unique to a particular buyer. There are many different reasons associated with the sales, and often these properties are purchased in bulk sales and do not rely on the appraisals. Potential buyers usually rely on the income stream they are capable of producing. There can be additional risks and factors affecting the purchase price. There can be extended vacancy rates, along with a higher expense ratio for tenant finish and leasing expenses. Subsequently, all of these factors can have a direct impact on the purchase price.

3. Mr. Arnold testified the cost approach was also considered and rejected as an indicator of value. These types of properties are not purchased and sold on the basis of replacement cost new less depreciation. The appraiser must determine losses in value from all sources. There are charts for determining physical and quantifying functional obsolescence. However, external depreciation is most accurately determined by comparing appropriate sales in the market to derive suitable depreciation figures. There were not enough reliable sales in the marketplace to be able to rely on an accurate rate of external depreciation.

4. Mr. Arnold testified that the income approach was relied upon for the best indicator of value. The Assessor's income format was used (with the exception of several differences) and the actual income and expenses from the subject were utilized.

5. The subject's income shows an actual rental rate of $15.53 per square foot as opposed to Respondent's projected rate of $17.09. The Respondent has also applied $19.25 to the 7,520 square feet of bank space located in the building. This equates to a weighted average of $17.09 per square foot. The original bank space has been reduced by a sublet into general office space and should not be valued any differently than the remaining space in the building. The total gross expenses were examined for years 1999 and 2000. After the deduction for taxes, depreciation, amortization and interest, the usable expenses were calculated to be $946,814.00. The indicated expenses ranged from $5.13 to $5.60 per rentable square foot.

6. Mr. Arnold testified that these expenses were significantly higher than the Respondent's reported expenses. To determine the test of reasonableness, the Building Owners and Managers Association (BOMA) reports were reviewed for expense calculations. The BOMA reports indicated a higher rate than the actual expenses for the subject. The report indicated a range of $5.58 to $5.72 after the deduction of real estate taxes. The major differences are in the areas of administrative, janitorial and building repair costs. Mr. Arnold believed an average expense rate of $5.37 was suitable and a capitalization rate of 11% was indicated.

7. Mr. Arnold testified that the major difference between the two reports is the Respondent used a projected rent rate of $17.09 per square foot taken from model sources versus the Petitioner's rate of $15.53 per square foot. Other notable differences are that the Respondent used an 11% vacancy rate and Petitioner used 10%; the Respondent used an expense rate of $4.00 per square foot and Petitioner used $5.37; and the Common Area Maintenance (CAM) was not included in the income or expense figures.

8. Mr. Arnold testified that he reviewed the three comparable sales used by the Respondent. He believes that it is difficult to derive accurate adjustment calculations. The first sale was part of a bulk sale and nine other properties were included in the sale. These sales were also purchased in 1998 when market conditions were stronger. Comparable sale #2 is located in a different sub-market, and the expenses ranged from $2.00 to $3.00 per square foot, considered to be on the low side. Comparable sale# 3 was also a bulk sale with difficulty in the adjustments.

9. Under cross-examination Mr. Arnold testified that the actual income did not reflect any CAM. The exterior and interior of the subject was inspected and rated as a Class C building. The reason the vacancy rate used was different from the Respondent's is because of the known loss of a major tenant.

10. Under redirect, Mr. Arnold testified that he did not break out the CAM expense. The difficulty is that other parcels separate from the subject share some of the expenses. There is only a certain percentage that Petitioner gets back, as well as an additional 10% recovery charge to cover the CAM. If the CAM is included in the income it should be included in the expenses as well.

11. Petitioner's witness, Ms. Amber Fehr, controller for Star Realty, testified that they

are the management company for the subject. The subject was packaged with several other buildings, including one Class A building, in an attempt to make the package more appealing for purchase.

12. Ms. Fehr testified that the market started to level off in 1999 and they started to see a decrease in the demand for office space. The vacancy rate started to increase and they were notified that some larger tenants in the building were going to be vacating.

13. Ms. Fehr testified there are restrictive covenants associated with the subject. The maintenance of the additional 22 acres is the responsibility of the subject. All of the costs for maintenance of the ponds, common area and snow removal are paid up front by the subject and then billed back to the other owners. At the time, many of the other businesses were in bankruptcy and it was difficult to retrieve any of the expenses. Some of the expenses incurred were eventually paid back by the new owners; however, there was still a moderate amount of money not collected. There has been very little updating to the subject and some deferred maintenance in the building was noted. The roof is old and needs to be replaced, the fire panel needs to be replaced, and the heating and air conditioning system is old and obsolete.

14. Mr. Fehr testified the restrictive covenants pose difficulty in marketing and selling the subject property. Most potential buyers are going to consider the overall affects of absorbing the maintenance costs up front for the other buildings. This is the reason they tried to market and sell the property as a bulk sale along with other buildings.

15. Under cross-examination, Ms. Fehr testified that 48% of the CAM expenses were collected. The expenses for the subject are high as well as the additional costs for maintenance of the 22 acres. There have been several lease renewals and several tenants came in for a short period of time, before going into bankruptcy.

16. Petitioner is requesting a 2001 actual value of $12,200,000.00 for the subject property.

17. Respondent's witness, Mr. Randall K. Brenimer, a Certified General appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	$16,100,000.00
Cost:	$18,000,000.00
Income:	$15,870,000.00

18. Based on the market approach, Respondent's witness presented an indicated value of $16,100.00.00 for the subject property.

19. Respondent's witness presented three comparable sales ranging in sales price from $5,778,000.00 to $22,000,000.00 and in size from 63,400 to 212,682 square feet. After adjustments were made, the sales ranged from $86.23 to $108.54 per square foot.

20. Mr. Brenimer testified that comparable sales #1 and #3 were involved in a bulk sale. The warranty deed provided the purchase price for these sales. Adjustments were made to all of the sales for differences in physical characteristics. Comparable sale #1 was considered to be the most similar to the subject.

21. Mr. Brenimer testified that the market approach is used as a test of reasonableness for the income approach and final estimate of value.

22. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $18,000,000.00.

23. Mr. Brenimer testified that the cost approach was not relied upon; however, it was considered as another test of reasonableness. The site values were based on verified sales that occurred within the statutory timeframe. From examination of the sales that took place, it was determined a rate of $5.90 per square foot would be assigned to the subject site.

24. The next step was to estimate the replacement cost of the improvements and to evaluate any form of obsolescence. The replacement cost was developed using the computerized C.L.T. or Marshall & Swift. The replacement cost was then adjusted for the appropriate amount of depreciation.

25. Respondent's witness used the income approach to derive a value of $15,870,000.00 for the subject property.

26. Mr. Brenimer testified that the Assessor’s office utilizes the direct capitalization method. Income models were compared with the actual income and expenses from the subject. After the real estate taxes, depreciation and interest were taken out, a rate of $4.83 per square foot was indicated for expenses. Based upon market rents in the area, Respondent concluded an indicated rental rate of $17.09 per square foot including the CAM.

27. Excluded from operating expenses are leasing commissions, tenant finish and replacement reserves. Leasing commissions and tenant finish expenses are capital expenses that can significantly fluctuate from one year to the next. The CAM expenses should be added to the income if it is to be deducted as an expense. The net operating income was capitalized at 12.80% including a tax load of 2.80%.

28. Mr. Brenimer testified that the subject’s actual income and expenses support the value conclusion used by the Respondent. There was no need to make any adjustments to the income models used for comparison. He pointed out that Mr. Arnold did not present the market or cost approach for a test of reasonableness.

29. Mr. Brenimer testified that the Assessor’s projected income was based on the full

value of the office space. The asking rate per square foot should include the CAM expenses.

30. Respondent assigned an actual value of $16,000,000.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. The Board has carefully reviewed all admitted evidence and testimony and concluded the subject is overvalued. Both parties presented well-documented and supportable appraisal reports. However, the Board agrees with the Petitioner that there is a direct impact on the overall marketability and potential sale of the subject due to the restrictive covenants. The fact that the subject is responsible for paying all the expenses for the common area up front and then trying to collect those expenses will affect how potential investors view this property.

3. The Board was also not convinced that there was any supportable evidence or testimony indicating the space occupied by the bank should be valued higher per square foot than other space in the building. The Board heard testimony from the Petitioner that the bank has sublet some of the area as general office space and there were no identifying factors as to why this space would be superior to any other space in the building.

4. Both parties were in agreement that there was minimal weight placed on the market and cost approach. The Petitioner did not present the cost and market approach in his report and the Respondent presented both approaches as a test for reasonableness. The main difference in the reports is the rental rate per square foot, vacancy rate and expense rate per square foot. The main issue was how the CAM was addressed in the income and expenses.

5. The Board believes the income and expenses used by the Petitioner are more reliable. It appears the Petitioner included the CAM in the expenses, but did not include all of it in the income. The Board applied $16.00 per square foot of rentable area as opposed to the $15.53 per square foot presented by the Petitioner and the $17.09 presented by the Respondent. The Board then applied this figure to the net rentable area of 184,460 indicating a potential gross income of $29,513,60.00. The Board used an 11% vacancy rate, an expense rate of $5.37 per square foot and a capitalization rate of 12.80%. The indicated value was calculated to be $13,225,742.00, rounded to $13,500,000.00.

6. The Board concluded that the 2001 actual value of the subject property should be reduced to $13,500,000.00, with $3,200,000.00 allocated to land and $10,300,000.00 allocated to improvements.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to $13,500,000.00, with $3,200,000.00 allocated to land and $10,300,000.00 allocated to improvements.

The Jefferson 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 25th day of June, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

JUN 25 2003

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

Penny S. Lowenthal

Penny S. Lowenthal

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

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