

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FAIRFIELD RESIDENTIAL INC.,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas E. Downey, Jr., Esq. Downey & Knickrehm, P.C.</p> <p>Address: 733 East 8th Avenue Denver, Colorado 80203</p> <p>Phone Number: (303) 813-1111</p> <p>E-mail: tdowney@downknick.com</p> <p>Attorney Reg. No.: 9686</p>	<p>Docket Number: 40257</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 6, 2003, Rebecca Hawkins and Karen E. Hart presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Jennifer Wascak Leslie, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**11801 York Street, Thornton, Colorado
Adams County Schedule No. 01719-01-2-14-018**

Petitioner is protesting the 2002 actual value of the subject property, an apartment complex built in 2000 and 2001, consisting of 16, two- and three-story buildings, a clubhouse, pool, rental office, maintenance garage and 17 detached garage buildings with 102 parking spaces. Buildings 5 and 6 were incomplete as of the assessment date of January 1, 2002. The complex is known as the Hawthorne Hill Apartments, located at 11801 York Street in Westminster, Colorado.

ISSUES:

Petitioner:

Petitioner contends that Respondent failed to make an adjustment to the property value for the incomplete buildings as of the assessment date. Respondent's sales comparison approach is fraught with errors and should not be considered credible. Petitioner's witness used eight comparable sales and applied an 86% complete calculation to arrive at a market value.

Respondent:

Respondent contends that the subject property was correctly valued using the market approach to value. Petitioner utilized an equalization and cost methodology, which is contrary to Colorado Revised Statutes. The subject property was 97% complete as of the assessment date.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Matthew Poling, CPA, a manager of Deloitte & Touche, presented an indicated value of \$28,270,000.00, based on the market approach to value.

2. Mr. Poling testified that Hawthorne Hills Apartments has 17 detached garage buildings with 102 parking spaces. The site is 1,094,663 square feet in size. It is zoned residential multi-family PUD. The PUD restricts the number of parcels and density. The gross building area is 417,439 square feet, with a net rentable area of 290,000 square feet. It was constructed in 2000 and 2001, finished in 2002. There is surface parking available. The construction type is frame with brick veneer. The apartment buildings are two and three stories in height.

3. Petitioner's witness testified that, as of the January 1, 2002 assessment date, 14 of the buildings had a Certificate of Occupancy (C.O.). Buildings 5 and 6 received a C.O. on June 17, 2002 and May 24, 2002, respectively. As of the assessment date, 48 units could not be leased; based on the number of units available, the percent of completion was 86% and the occupancy was 64%.

4. Mr. Poling testified that he had considered, but did not use, a gross rent multiplier because there were no rents in place at the subject property on the level of value date. To determine a gross rent multiplier, one must use the sales price and the rents at the time of sale.

5. Based on the market approach, Petitioner presented an indicated value of \$29,400,000.00 for the subject property.

6. Petitioner's witness presented eight comparable sales ranging in sales price from \$58,593.00 to \$100,436.00 per unit and in size from 220 to 488 units. There was no adjusted sales price as the adjustments were qualitative.

7. Mr. Poling testified that he used eight sales that occurred during the base period. Five of the sales were located in Adams County, with one each from Arapahoe, Jefferson, and Denver counties. He looked at the rent per square foot. He did not have economic rents at the subject as of the level of value date; he used the rents in place on October 1, 2001, which were \$1.11 per square foot.

8. Mr. Poling testified that he did not have the rent per square foot for his comparable sale 1. The comparables ranged in rent from \$0.75 to \$1.19 per square foot. Only comparable 1 of the Adams County sales was given weight, as it was assumed to have similar rents as the subject. The remainder of the Adams County sales was inferior in rent rates. He also gave weight to sales 6, 7, and 8 as they had similar rents as the subject.

9. Petitioner's witness testified that he looked at market conditions at the time of sale, based on the number of units, percent complete, unit mix, condition, age, etc. He used a quantitative analysis. Comparable 1 is basically across the street from the subject.

10. Mr. Poling testified that the subject property apartment mix is 62% one-bedroom units, 33% two-bedroom units, and 4% three-bedroom units. He took the net rentable area divided by the total number of units and calculated the subject average square foot per unit of 905 square feet.

11. Petitioner's witness testified that the subject density is restricted to the current number of units, so no adjustment was needed for its higher than usual land to building ratio. Comparable sale 2 was adjusted for intended use, as it has some condominium units. He also looked at the occupancy rate at the time of sale.

12. Mr. Poling analyzed his comparable sales and arrived at a per unit value of \$87,500.00 for the subject property, for a total value of \$29,400,000.00. Mr. Poling testified that he also completed an equalization analysis of the comparable sales. Analyzing the four comparable sales located in Adams County, he arrived at an equalization value of \$24,192,000.00.

13. In his final reconciliation of value, Mr. Poling gave most weight to the sales comparison approach, but also gave weight to the equity approach.

14. Under cross-examination, Mr. Poling testified that the ancillary buildings at the subject had Certificates of Occupancy at the assessment date. His completion percentage is based on the number of units that could not be occupied as of January 1, 2002. It is not based on the actual progress of the construction. He believes he gave value to buildings 5 and 6. He gave the most weight to comparables 1, 6, 7, and 8. The sales outside of Adams County range from an estimated 10 to 20 miles from the subject. He felt that the sales outside of Adams County were similar in location, other than sale 6, based on traffic, retail, and convenience to downtown Denver. He believes he has authority from the Colorado Constitution to consider an equalization approach; it needs to be used appropriately and given the weight it deserves.

15. Under redirect, Mr. Poling testified that he is using equalization to bring to light the fact that they are in a competitive market and the tax amount affects the attractiveness of the property to investors.

16. Upon questioning by the Board, Mr. Poling clarified that he does not know what the rents are at comparable sale 1; they were unavailable due to confidentiality agreements. He assumes its rents are comparable to the subject. Comparable sale 1 is most similar to the subject in other attributes.

17. Petitioner is requesting a 2002 actual value of \$28,270,000.00 for the subject property, or \$84,137.00 per unit.

18. Respondent's witness, Mr. Vernon Penton, a Certified Residential Appraiser with the Adams County Assessor's Office, presented an indicated value of \$34,287,176.00 for the subject property, based on the market approach.

19. Mr. Penton testified that the subject property has 17 detached garages, 417,439 square feet of rentable area, and an additional 344,500 square feet of off-street parking. Every unit has a fireplace and washer and dryer hook-ups. The subject property ranks in the top five percent of quality as compared to other multi-family units in Adams County.

20. Respondent's witness presented three comparable sales ranging in sales price from \$13,643,769.00 to \$27,000,000.00 and in size from 168,610 to 370,440 square feet. After adjustments were made, the sales ranged from \$35,671,932.00 to \$41,149,268.00.

21. Mr. Penton testified that the sales comparison approach is the only approach allowed to value residential property in Colorado. Mr. Poling's equalization method is not valid. The gross rent multiplier is a part of the market approach. Mr. Penton believes the gross rent multiplier is the only way to address income in residential properties; it is imperative to look at it and consider it. He used the sales price per square foot for comparison, as it is a better indicator of value for apartment buildings. He also considered and used the sales price per unit.

22. Mr. Penton testified that he adjusted his comparable sales at the rate of 0.5% per year for year of construction. He also adjusted the sales for site size, quality, condition, fireplaces, parking, etc. Comparable sale 1, Gleneagle Apartments, sold as a new project shortly after completion, is located within ¼ mile of the subject and draws from the same area as the

subject. Comparable sale 3 is next door to the subject. The site size adjustment was calculated at \$3.00 per square foot. For his reconciliation, he placed 50% of weight on comparable sale 2, 30% on comparable sale 1, and 20% on comparable sale 3.

23. Mr. Penton testified that the gross rent multiplier analysis indicated a lesser value than the sales comparison approach.

24. Regarding partially completed improvements, Mr. Penton testified that he spoke with the construction manager about the completion of the project - all but buildings 5 and 6 were complete as of the assessment date. He used completion guidelines from Marshall & Swift. Building 6 was 99% complete. Building 5 was 98% complete, but was being remodeled for more handicap access; 75% of the remodel was complete. He arrived at an overall completion rate of 97%. Mr. Penton asserted that Mr. Poling's methodology for completion is not correct; that there is an intrinsic value for the incomplete buildings.

25. Regarding Mr. Poling's comparable sales, there is only one sale that is common to Mr. Penton's. Mr. Penton considers the Adams County sales to be comparable to the subject. The out of county sales are not necessary as there are sufficient sales in Adams County that are located in the same economic area as the subject. Mr. Poling conducted a qualitative analysis. Mr. Penton used a quantitative method so as not to mislead.

26. Under cross-examination, Mr. Penton testified that there were 63 sales of multi-family properties in Adams County; he used three sales that were close in proximity and most similar to the subject. He did not use the other Adams County sales used by Mr. Poling, as they were not the best comparables. He did not use a percent complete in his report. His concluded value is a 100% complete value, as is the assigned value.

27. Mr. Penton testified that he assisted in the writing of procedures for gross rent multiplier. You do not time adjust the sales price; if he time trended his sales, it was an error. He relied on several units of comparison: square foot and unit comparison. It is not uncommon to have a 50% adjustment to comparable properties. He was not aware that sale 3 was between related parties; the sale may be questionable, though it is within the sales range of the remaining sales. The 60% adjustment on comparable 1 is not excessive in his opinion. The 270% adjustment made to comparable 3 does not give him concern as an appraiser. The largest adjustments were for site size. He admitted that the adjustments for condition in his grid are incorrect; they show 2% per year but should be as noted on page 19; 15%, 2%, and 4% respectively. His total square footage is useable square footage, not net; and includes common areas, etc. He admitted to having made many errors in his adjustment grids. He apologized profusely and stated that at this point, the grid was a "piece of junk."

28. Regarding the gross rent multiplier, Mr. Penton testified that the subject had not received stabilized occupancy as of the level of value date, though it is not relevant. The gross rent multiplier takes into account all relative market factors.

29. Upon questioning of the Board, Mr. Penton testified that his presented value and the assigned value are a 100% complete value; he does not make a percentage complete adjustment for buildings that are 95% or greater complete.

30. Under recross-examination, Mr. Penton testified that he did not make a percent complete adjustment. If he agreed an adjustment should be made, it should be made to the assigned value.

31. Respondent assigned an actual value of \$33,600,000.00 to the subject property for tax year 2002.

32. Mr. Poling, in rebuttal, testified that the price per unit is generally lower when there is a superior number of units or unit mix. Regarding Mr. Penton's site size adjustments, Mr. Poling does not believe there should be a site size adjustment. Mr. Penton's total square footage adjustment is excessive; it should not be adjusted for common area. He confirmed that Mr. Penton's sale 3 was between two entities creating a joint venture.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2002. Respondent's witness presented a well-organized and well-supported analysis of the subject property value.

2. Mr. Penton admitted to having made numerous errors in his report. Additionally, his net adjustments were large, his third comparable sale was between related parties and suspect regarding the sales price, and he did not apply a percent complete to his concluded value. Based on all these reasons, the Board determined it could give little weight to his report.

3. The issue concerning the Board is the percent complete of the property that should be applied as of the assessment date. Mr. Penton testified that the overall completion of the subject property was 97% on the assessment date, but he did not make an adjustment for the incompleteness of the project. Mr. Poling's calculation of completeness at 86% was not persuasive. Mr. Poling presented a range of complete calculations from 86% to 90%. The Board recognizes that a percentage of completion should be applied, and has determined that a 90% adjustment is appropriate.

4. The Board utilized Mr. Poling's full market value conclusion via the sales comparison approach and applied a 90% complete factor. The Board concluded that the 2002 actual value of the subject property should be reduced to \$30,576,000.00.

ORDER:

Respondent is ordered to reduce the 2002 actual value of the subject property to \$30,576,000.00.

The Adams 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 23rd day of May, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Rebecca Hawkins

Rebecca Hawkins

This decision was put on the record

MAY 22 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

