

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner :</p> <p>FAIRWAYS APARTMENTS LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket Nos.: 46042 & 47052</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 20, 2008, Karen E. Hart, James R. Meurer, and Debra A. Baumbach presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Eugene J. Kottenstette, Jr., Esq. Petitioner is protesting the 2005 and 2006 actual value of the subject property.

The Board consolidated Docket Nos. 46042 and 47052.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**10700 East Dartmouth Avenue, Denver, Colorado
(Denver County Schedule Nos. 06355-00-008-000, 06355-00-018-000,
and 06355-00-019-000)**

The subject property is a three-story, garden-style apartment complex containing 959 units in 37 buildings. Schedule No. 06355-00-008-000 contains 230 units constructed in 1974, Schedule No. 06355-00-018-000 contains 270 units constructed in 1977, and Schedule No. 06355-00-019-000 contains 459 units constructed in 1979. The complex is situated on 29.51 acres. Also included are 169 carports and 1,069 parking spaces. The amenities include: swimming pools, hot tub, laundry, children's playground, pet area, recreation room, volleyball courts, tennis courts, and a sauna.

Petitioner presented an indicated value of \$39,000,000.00 for the subject property for tax years 2005 and 2006.

Petitioner presented six comparable sales ranging in sales price from \$4,300,000.00, to \$33,200,000.00 and in number of units from 78 to 768. Adjustments were made for location, age, size of complex, economic characteristics, complex quality, and average unit area. After adjustments the indicated price per unit ranged from \$37,101.00 to \$50,530.00 and the indicated price per square foot ranged from \$49.81 to \$80.82.

Petitioner's witness, Mr. Todd Stevens, contends the comparable sales utilized were considered to be the most similar and best available. Due to the lack of sufficient sales during the time period there was no adjustment for market change and several of the sales are from the extended base period. After the necessary adjustments the indicated value per unit equated to \$42,000.00 or \$57.23 per square foot. This resulted in an indicated value of \$40,278,000.00. Personal property of \$361,656.00 was then deducted for a final value of \$39,916,344.00.

Petitioner presented a gross rent multiplier (GRM) analysis for the subject property. There were eight comparable apartment complexes reviewed with at least 100 units and built between 1970 and 1980. The average GRM was estimated to be 6.40 and was utilized in the analysis with an annual gross potential rent of \$5,986,705.00 for an indicated value of \$37,953,258.00. The methodology was utilized as additional support for the final value conclusion from the market approach.

Petitioner contends that there is deferred maintenance throughout the complex. The subject property was constructed in three phases. The boiler system in the first phase needs to be replaced at a cost estimate of \$440,000.00. The irrigation system in the first phase needs replacing at a cost estimate of \$330,000.00. The parking lot replacement has been allocated \$130,000.00 per year. Additionally, all of the units are in original condition with no updating or remodeling.

Petitioner contends that there are also economic challenges affecting the subject property with high vacancy rates and declining rental rates during the base period. The overall location of the subject property is considered to be inferior to other similar properties. The subject is located near Kennedy Golf Course and also is affected by adverse influences from other businesses in the area.

Petitioner's witness testified he does not agree with Respondent's comparable sales analysis. Three out of the four sales used are located outside of Denver County. Respondent's Sales 1, 2, and 3 were not offered on the open market. Sales 1 and 3 were involved with low income housing and tax credits. Respondent's Sale 4 is the same sale as Petitioner's Sale 1.

Mr. Stevens further testified that Respondent's GRM analysis was flawed. The sales used in the analysis were based upon sales that were not arm's-length and not offered on the open market. Respondent relied on the higher end of the GRM range indicating a higher value for the subject. The subject is an older property and would not command such a high GRM.

Petitioner is requesting a 2005 and 2006 actual value of \$39,000,000.00 for the subject property.

Respondent presented an indicated value of \$57,377,500.00 for the subject property.

Respondent presented four comparable sales ranging in sales price from \$10,800,000.00 to \$19,500,000.00 and in number of units from 200 to 302. Adjustments were made for personal property, time, location, and average unit size. After adjustments the indicated price per unit ranged from \$48,614.00 to \$74,290.00 and the adjusted price per square foot ranged from \$65.61 to \$118.44.

Respondent's witness, Mr. Marc Blank, Certified General Appraiser with the Denver County Assessor's Office, testified the two main criteria for choosing the comparable sales were size and age. There were limited suitable sales and it was necessary to go back in six month increments beyond the base period to find sales. Another concern was finding sales with similar unit size.

Respondent also presented a GRM analysis for the subject property with an indicated value of \$50,981,140.00. Mr. Blank reviewed his comparable market sales for a GRM. He relied on the first three of his four comparable sales to derive an average GRM of 8.21. He reviewed the subject's potential income, Co Star, and Apartment Insights to derive an annual gross potential rent of \$6,209,640.00.

Respondent testified the subject property does have spots of deferred maintenance, however was considered to be in overall average condition. The subject is considered to be in a superior location on the north end of Kennedy Golf Course. There are bike paths and Cherry Creek Reservoir located nearby. There were no external adverse influences which would affect the subject property.

Respondent argued two of Petitioner's comparable sales are outside the base period and two of the sales are much smaller in units. The adjustments made by Petitioner are excessive and the adjustment made for location is not supported.

In rebuttal to Petitioner's argument that Respondent's sales were not available on the open market and are not considered arm's-length transactions, Respondent contends that most of these types of properties are investment properties and it is not uncommon for them not to be listed on the open market.

In determining the final value Respondent placed equal weight on the market approach and the GRM analysis.

Respondent assigned an actual value of \$58,499,000.00 to the subject property for tax years 2005 and 2006.

Petitioner presented sufficient probative evidence and testimony to prove the subject property was incorrectly valued for tax years 2005 and 2006. The Board understands the challenge in finding suitable sales for a complex of this size. The Board determined that Petitioner's Sale 4 is the best comparable sale, as it is the closest in size and unit count, with additional support from Petitioner's Sales 5 and 6.

The Board agrees with Respondent that sales used outside the immediate market area are suitable for comparison when there is a lack of sales. Additionally, the Board agrees with

Respondent that investors are well informed about these types of properties and it is not uncommon for them not to be advertised on the open market. Sales that are involved with low income housing with tax credits may be considered in the analysis, as long as the terms of the contracts are reviewed to determine what affect there might be. However, the Board was not convinced the sales used by Respondent are reflective of market conditions in complexes of this size. The economy of scale is present in that all of Respondent's sales are considerably smaller in size and unit count, and indicate a higher per unit value than the sales that are larger in size and unit count.

The Board was not convinced that Petitioner's adjustments were well supported in the market. Some of the adjustments are aggressive and the Board does not agree the subject has an inferior location. The Board relied on Petitioner's Sales 4, 5, and 6 and applied adjustments for all differences. The Board applied a 5% location adjustment and relied on Petitioner's adjustment calculation for size, age, and complex quality. The Board did not apply an adjustment for economic characteristics; the Board believes this would be reflected in the sales price. After the necessary adjustments, the Board concluded to a value of \$50,000.00 per unit resulting in an overall value for the subject property of \$47,950,000.00.

The Board gave minimal weight to the GRM analysis presented by both parties. The Board was not convinced the parties provided suitable support for the concluded GRM used.

The Board concluded that the 2005 and 2006 actual value of the subject property should be reduced to \$47,950,000.00.

ORDER:

Respondent is ordered to reduce the 2005 and 2006 actual value of the subject property to \$47,950,000.00.

The Denver County Assessor is directed to change his 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 CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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 CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five 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.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 21st day of October 2008.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

[Signature]

James R. Meurer

Debra A Baumbach

Debra A. Baumbach

This decision was put on the record

OCT 20 2008

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

[Signature]
Heather Flannery

