BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: HA HOUSING LP, v. Respondent: DENVER COUNTY BOARD OF EQUALIZATION.	Docket No.: 46376
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on November 20, 2007, Diane M. DeVries and Debra A. Baumbach presiding. Petitioner was represented by Mr. William A. McLain, Esq. Respondent was represented by Mr. Charles T. Solomon, Esq. Petitioner is protesting the 2005 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

1705 Franklin Street, Denver, Colorado
(Denver County Schedule No. 02354-14-024-000)

The subject property is a multi-unit apartment complex consisting of 29,896 square feet of gross building area with a 10,038 square foot basement. There is 32,746 net rentable square feet. There is a total of 47 apartments with nineteen one-bedroom, twenty-two two-bedroom, and six three-bedroom residential units. There are utility rooms, leasing and management offices, and mechanical/maintenance rooms.

Petitioner's witness, Mr. Ronald Hambrick, testified the subject property is involved in a government-mandated rent restriction program and also a land use restriction agreement ("LURA"). The program in Colorado is administered and overseen by the Colorado Housing and Finance Authority. The program allows for low-income housing in exchange for tax credits. The property is encumbered under both the rent restrictions and the LURA for a period of thirty years. Prior written consent must be given before any sale, conveyance, or transfer of the property.

Petitioner contends that as a result of the rent restrictions and the LURA placed upon the subject property there is an adverse effect on the marketability and value. Petitioner argues that there should be two adjustments made to the value of the property. The first adjustment is through an economically derived marked adjustment ("EDMA") factor to account for the decreased value caused by the rent restrictions. The second is an adjustment for the illiquidity created by the LURA in place on the subject property.

Petitioner presented an indicated value of $1,677,000.00 for the subject property.

Petitioner presented a market approach to value the subject property using five comparable sales ranging in sales price from $762,000.00 to $1,850,000.00, equating to an actual price per square foot of $98.27 to $134.66. After adjustments were made, the sales ranged from $60.43 to $82.01 per square foot of net rentable area.

All of Petitioner's comparable sales were properties without rent restrictions and not bound by LURAs. Petitioner adjusted each comparable by 28% to account for the illiquidity associated with the LURA in place on the subject property. To determine this adjustment Mr. Hambrick researched articles and discussed the manner in which to calculate an adjustment with peers. Petitioner applied 28% based upon the remaining years left on the 30-year LURA.

Using the Division of Property Taxation's guidelines, Petitioner calculated an EDMA factor of 0.80 to account for the rent restrictions and applied it to the value from the market approach to reach a final value conclusion.

Petitioner's witness, Mr. Harry Fuller, with the Division of Property Taxation testified there are procedures in place within the ARL to calculate adjustments to take into account the effects of restricted rents. However, the adjustment calculation looks specifically at income loss. A further adjustment for illiquidity might be warranted if it is based on the market. Mr. Fuller recommended a paired sales analysis to determine what adjustment would be appropriate.

Petitioner is requesting a 2005 actual value of $1,677,000.00 for the subject property.

Respondent presented an indicated value of $2,706,000.00 for the subject property based on the market approach and an EDMA factor.

Respondent's witness, Mr. Greg A. Feese, presented an appraisal report using the market approach. Respondent presented four comparable sales ranging in sales price from $1,195,000.00 to $1,587,000.00. After adjustments were made, the sales ranged in sales price from $3,191,193.00 to $3,461,550.00. The adjusted sales price per square foot of net rentable area ranged from $110.34 to $113.40. Respondent's comparable sales were not rent restricted properties or bound by a LURA. Respondent chose sales that were similar in location, style, quality, and functional features. Adjustments were made for all differences in physical characteristics. In addition, a rent analysis was also preformed to derive an estimated Gross Rent Multiplier which further supported the value indication.

Respondent developed an EDMA to account for the reduced income stream based on the rent restrictions. Respondent calculated an EDMA factor of 0.82. He did not make an additional adjustment for illiquidity. Petitioner received tax credits which can be sold for monetary exchange in return for the restrictions placed upon the property. Respondent contends that an additional adjustment for illiquidity would be adjusting twice for the same factor and there is no market support for such an adjustment.

Respondent reviewed the articles presented by Petitioner addressing the issue of illiquidity. The articles do not appear to address the issue of illiquidity associated with rent restricted properties. They discuss illiquidity pertaining to other investment options. Respondent argued that Petitioner provided no evidence to support what if any adjustment might be warranted.

Respondent assigned an actual value of $3,368,200.00 to the subject property for tax year 2005, but is recommending a reduction to $2,706,000.00 after applying an EDMA factor to the subject property.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2005. After careful consideration of all the evidence and testimony presented, the Board placed most weight on Respondent's comparable sales, adjustments, and value conclusion using the market approach. Petitioner and Respondent presented similar EMDA factors; the Board agrees with Respondent's EDMA calculation to account for reduced rents associated with a restricted property.

Petitioner did not present sufficient evidence to convince the Board that an additional reduction to the subject property value is warranted to account for any illiquidity created by the LURA. Real estate, compared with other investment vehicles, has a certain degree of illiquidity. Savings accounts, CD's, stocks, and money market accounts are readily accessible with minimal costs involved versus real estate. It can take a long time to liquidate real estate especially in a down market and there are higher costs associated with maintaining real estate. No market analysis was presented to prove to the Board that any reduction to the market value for illiquidity was necessary. According to the Assessor's Reference Library "if the subject government-assisted property has restricted rents, a market adjustment must be considered to account for the reduced income stream and the long-term (30+ years) land use restriction agreement (LURA)." 3 *Assessor's Reference Library: Land Valuation Manual* 7.30 (2004). The Board agrees that a market adjust should be considered to account for a long-term LURA, but without evidence that the agreement affects the market for the subject property, the Board will not make an adjustment.

The Board concludes that the 2005 actual value of the subject property should be $2,706,000.00.

ORDER:

Respondent is ordered to reduce the 2005 actual value of the subject property to $2,706,000.00.

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 Colorado Revised Statutes ("CRS") section 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 section 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.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 13th day of March 2008.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Debra A. Baumbach

This decision was put on the record

MAR 1 3 2008

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

Heather Heinlein

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