

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>TOWER 48 ASSOCIATES II LP, AND TOWER 48 ASSOCIATES I LP,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Kenneth S. Kramer, Esq. Address: 370 - 17th Street #2600 Denver, Colorado 80202 Phone Number: (303) 825-0800 E-mail: kskramer@bw-legal.com Attorney Reg.: #16929</p>	<p>Docket Number: 37897</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 19, 2001, Karen E. Hart, Debra A. Bambach, and J. Russell Shaw presiding. Petitioners were represented by Kenneth S. Kramer, Esq. Respondent was represented by Eugene J. Kottenstette, Esq.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**T3 R66 S22 NW/4 DIF RCP#43592 PAR A (Denver County
Schedule Nos. 00222-00-038-000 and 00222-00-039-000)**

Petitioners are requesting an abatement/refund of taxes on the subject properties for tax year 1999. The subject property consists of a two-phased, multi-family facility situated on approximately 15 acres. There are 14 residential buildings, some detached garages, a clubhouse, and a pool. Phase I of the development is an affordable housing project.

ISSUES:

Petitioners:

Petitioners contend that in developing the valuation for the properties as of January 1, 1999, the Respondent erred in its interpretation of Division of Property Taxation (DPT) guidelines as prescribed in Assessors Reference Library, (ARL), Volumes 2 and 3 with respect to the calculation of partially completed improvements.

The Petitioners disagree with the underlying valuation methodology used by Respondent to establish the per unit value from which the percentage completion was calculated.

Respondent:

Respondent contends that its calculations of market value as if complete are accurate. Respondent further contends that its methodology for calculating the percentage complete for partially completed improvements is an allowed deviation from the DPT prescribed guidelines.

FINDINGS OF FACT:

1. The Board amended the petition, due to a clerical error, to include both Petitioners' names and, therefore, accepted jurisdiction on Schedule Nos. 00222-00-038-000 & 00222-00-039-000.

2. Mr. John Evans, General manager for the Petitioners, appeared on behalf of both Petitioners.

3. Mr. Evans described the property as being a two-phased, multi-family facility at the corner of 48th Avenue and Tower Road in Aurora, Colorado. The facility, situated on approximately 15 acres, consists of 14 residential buildings, some with detached garages. Each building contains 20 units. There is a clubhouse and pool on the premises that serves the entire complex. Phase I of the development is an affordable housing project, while Phase II is not subject to similar leasing restrictions. The structures have been constructed utilizing medium grade materials. The average size of a typical unit is approximately 999 square feet, calculated based on guidelines mandated by the U.S. Department of Housing and Urban Development. The Petitioners are targeting a "blue collar, sub-market tenant."

4. Based on the market approach, Petitioners' witness presented an indicated value for the subject properties of \$3,309,300.00 for Schedule 00222-00-038-000, and \$2,945,300.00 for Schedule 00222-00-039-000.

5. The Petitioners' witness testified that the structures on the site were in various stages of completion as of January 1, 1999. He demonstrated his perception of the percentage completion of each structure using the guidelines found in ARL Volume 3, Section 1.17. A copy of these guidelines was found in Petitioners' Exhibit 3. Petitioners' Exhibit 2, a copy of handwritten notes created personally by Mr. Evans, was provided to indicate how, in utilizing the ARL guidelines found in Exhibit 3, he arrived at his estimate of percentage good as of January 1, 1999.

6. Mr. Evans then referred to Petitioners' Exhibit 1, a sample Daily Construction Report (DCR) form provided by the general contractor, Colorado First Construction Company. With this sample form from December 11, 1998, he further demonstrated to the Board how he utilized project specific data received from the general contractor to determine the status of each building as compared to the ARL guidelines for percentage complete on a date near January 1, 1999.

7. Mr. Evans brought the Board's attention to Respondent's Exhibit C, several photos of the property taken by the Respondent on December 22, 1998. He asserted that the condition of the structures as depicted in the photos seemed consistent with actual condition noted within his estimates as of the end of December 1998. Though he was not able to identify specific structures from the photograph, he did note that due to the absence of vent stacks protruding through the roof, it was likely that the plumbing in the structures photographed was not complete. On average, and according to his interpretation of the descriptions outlined in the ARL guidelines, Building 1 appeared to be 50% complete while the remaining buildings were approximately 25% complete on January 1, 1999.

8. Under cross-examination, Mr. Evans testified that the original cost of the overall construction was \$16,165,000.00. Construction costs for the pool and clubhouse were estimated at \$400,000.00. The 160 detached garages were estimated to be \$2,500.00 each. He testified that the garages were built in stages along with the residential units and utilized as covered storage for construction materials delivered to the site. Construction of the clubhouse was not completed until May or June 1999.

9. The Petitioners' exhibits did not include a market appraisal. Mr. Evans testified that the \$73,200.00 per unit assigned by the Respondent in its initial valuation seemed a reasonable basis from which to apply the percentage completion adjustments. He testified that he was not aware of the revised valuation of approximately \$85,000.00 per unit contained in Respondent's Exhibits A and B until the exchange of information for this proceeding. Although he had some familiarity with the comparable sales contained within the Respondent's valuation, he deferred to his partner, Mr. Steve Hegge, for testimony with respect to that data.

10. Mr. Evans pointed out how Respondent's appraiser had developed his percentage completion estimate primarily from construction budget data provided by the Petitioners. He referred to Respondent's Exhibit F, a chronological summary of construction payments that occurred from March 1998 to December 1998. Mr. Evans testified that this payment stream demonstrates the "draws" made by the general contractor from the construction budget but is not reflective of any percentage of completion for the project. He testified that much of this payment stream is front-end loaded to reimburse the contractors for material purchased, as well as to provide working capital to pay subcontractors on a scheduled basis. He believes that by using the data in Exhibit F to develop the percentage completion estimate for the project, the Respondent's appraiser has erroneously used a method inconsistent with the guidelines issued by the DPT. He believes that DCR is more indicative of actual project status and complies with the DPT guidelines.

11. The Petitioners' witness also provided Exhibit 4, the Colorado Housing and Finance Authority Regulatory Agreement, to demonstrate the rent restrictions placed on the units subject to that agreement.

12. Under cross-examination, Mr. Evans testified that the rent-restricted units were completed first. He also agreed that some change orders might have occurred after January 1, 1999. He testified that a 10% contract retainage is typical in projects similar to the subject, with the final payments occurring subsequent to a punch list process. He also testified that he had developed several similar projects with his partner, Mr. Hegge.

13. When asked by Respondent's Counsel, he reconfirmed his use of Daily Construction Report data to estimate percentage completion in conjunction with descriptions detailed in the DPT guidelines. He did not consider actual payments to contractors through December 1999 to develop his percentage completion estimate.

14. Under questioning from the Board, Mr. Evans testified that he relied on the DCR's provided by the general contractor and did not participate in any physical inspections of the structures. He relied on the Project Manager, Mr. Barry Siegel, to undertake the physical inspections of the property.

15. Petitioners' next witness was Mr. Barry Siegel, Construction Manager for the general contractor, Colorado First Construction Company. Mr. Siegel was the manager for both segments of the project beginning June 1998 through completion. He officed in an on-site construction trailer during this period, and was consequently able to make daily observations of the stages of construction.

16. Mr. Siegel testified as to the appropriate usage of the DCR found in Exhibit 1 as a tool to quantify the activities that occur each day. The primary function of the report is to make certain that the project is being done in correct sequence. The reports were provided to Mr. Siegel daily by the appropriate project superintendents. It was Mr. Siegel's responsibility to review each of the reports and to be custodian of the records.

17. Mr. Siegel confirmed that Exhibit 2 is a summary of the Exhibit 1 data that was compared to the DPT guidelines. In utilizing the report to quantify daily activities in support of stages of completion of various components, he testified that if a DCR showed activity still in process for items such as electrical, mechanical, plumbing, etc., or if a contractor was listed that he knew to be part of a specific function, he presumed those segments to be incomplete. Utilizing data found in DCR's filed near year-end, he assisted Mr. Evans in backing into the DPT formulas shown in ARL Volume 3, Section 1.17. By example, Mr. Siegel referred to an entry for Steele Brothers, the HVAC contractor, on the DCR for January 19, 1999. The report shows that Steele Brothers had 6 employees on site that day working in Buildings 11, 13, and 14. His interpretation of the data was that the mechanical components for those structures was incomplete as of that date, and based on the DPT guidelines, those specific structures qualified for something less than 50% complete.

18. Regarding the matter of the timing of construction payments shown in Exhibit F, Petitioners' witness testified that he is responsible for preparing monthly applications for payments. He agreed that a distinction should be made between dollars loaned through construction draws to reimburse contractors for material in place at a particular time and actual percentage completion as of a specific payment date. Continuing with the Steele Brothers' example, he testified that all furnaces for the project would have been delivered to the site very early in the project and that Steele Brothers would have been reimbursed immediately for the materials. However, payment for labor costs related to those furnace units would only occur as billed by the contractor when installation occurred.

19. Mr. Siegel testified that the photographs found in Respondent's Exhibit C do not seem to support a percentage completion as high as noted in Respondent's Exhibits A and B. Due to snow on the roof, he was unable to note the existence of plumbing vent stacks protruding through the roof, nor whether any roof coverings had been installed as of the date of the photographs.

20. Under cross-examination, Mr. Siegel provided further detail with respect to interpreting the DCR's. From the DCR dated January 15, 1999, he noted the following contractors, their specialties and the unit in which they were working: Drywall contractor JDI was working in Building 1, and Crown Cabinet was stocking materials in Building 1. Those notes indicated to him that, based on the DPT guidelines, Building 1 was less than 75% complete as of the assessment date. It was also noted that the painting contractor, Off The Wall, was not on site that day.

21. In response to questions from the Board, Mr. Siegel testified that the buildings were to be completed based on the priority noted at the top of the DCR. As project manager, it was his responsibility to assign and schedule contractors to work in a sequence that would allow the building to be completed in the prescribed order. As noted on the DCR's, contractors were assigned to various buildings based on a specified sequence. He also testified that the Clubhouse was to have been completed first. Garages and other related parking areas were to have been completed in conjunction with the specific building they supported.

22. Mr. Steve Hegge, Co-Managing Partner for the project, testified on behalf of the Petitioners. His expertise was in the area of development of multi-family projects such as the subject. Regarding Respondent's sales comparison approach valuation, he testified that he was very familiar with each of the comparables selected by the Respondent's appraiser in Exhibits A and B. He considered Comparable 3 to be most similar to the subject. Comparables 1 and 4 were superior due to quality of construction and location, and Comparable 2 was considered inferior primarily due to age and design.

23. Petitioners are requesting a 1999 actual value of \$3,309,300.00 for Schedule 00222-00-038-000, and \$2,945,300.00 for Schedule 00222-00-039-000.

24. The Respondent's witness, Mr. Lawrence M. Delsart, MAI, an Appraiser with the Multi-Family Section of the Denver County Assessor's Office, testified that he had prepared Exhibits A and B. He testified that Exhibit F, a summary and tabulation of construction payments made by the Petitioners, had been prepared by Counsel for the Respondent using the relevant data from Construction Progress Schedules contained within Exhibits A and B.

25. Respondent's witness presented an indicated value for Schedule 00222-00-038-000 of \$6,599,200.00, and an indicated value for Schedule 00222-00-039-000 of \$6,992,900.00 based on the market approach.

26. Respondent's witness presented four comparable sales ranging in sales price from \$15,875,000.00 to \$38,500,000.00 and in size from 211,674 to 431,596 square feet. After adjustments were made, the sales ranged from \$15,663,878.00 to \$34,527,680.00. On a value per square foot basis, the comparables, as adjusted, ranged from \$74.00 to \$80.00 per square foot. His indicated values per square foot were \$76.00 for Schedule 00222-00-038-000, and \$78.00 for Schedule 00222-00-039-000.

27. Adjustments considered for each comparable included a deduction for value attributable to personal property, as well as adjustments for time, physical differences and functional differences. He testified that Sales 1 and 4 were superior to the subject based on location and unit size.

28. In applying the resulting data to the subject parcels, Respondent's witness first noted that he had considered the impact to value of the rent restricted units and had calculated an 11% negative adjustment to Schedule 00222-00-039-000. He had developed this adjustment using rent differential data supplied by the Petitioners. He next presented a land market sales grid demonstrating a base price of \$2.50 per square foot for the two parcels. The grid for Schedule 00222-00-039-000 was adjusted by the same 11% noted above. No similar adjustments were made for Schedule 00222-00-038-000.

29. To develop his final value indicator for each of the two subject schedules, Respondent's witness presented a value as if complete using the values per square foot noted above. The adjusted land value was deducted to arrive at a value of the structures as if completed. A percentage complete factor was applied based on the construction payment data found in Exhibit F to arrive at the value of the structures as if partially completed. Finally, the adjusted land values were added back to arrive at an overall value for each schedule. According to Mr. Delsart's valuation report, the indicated value for Schedule 00222-00-038-000 was \$6,599,200.00, and the indicated value for Schedule 00222-00-039-000 was \$6,992,900.00.

30. Mr. Delsart testified that he had inspected the property on March 29, 2000 and had also visited each of the comparable sales used in his valuation report. The photos of the subject included in Respondent's Exhibit C and the photos of the comparables in Exhibits A and B had been taken by Mr. Mike Von Donselaar. Mr. Delsart deferred testimony related to those inspections as well as the methodology utilized to calculate percent complete to Mr. Von Donselaar.

31. Under cross-examination, Mr. Delsart agreed that the Respondent's assigned value was based on \$73,320.00 per unit. Mr. Delsart further noted that the procedures utilized to calculate percentage completion were likely found only in "in-house" memos not readily available to the public.

32. Respondent's witness, Mr. Mike Van Donselaar, a Supervisor in the Multi-Family Section of the Denver County Assessor's Office, testified that in his role as primary appraiser on the facility, he had viewed the subject during both 1998 and 1999. It was his view that the form used by his office meets the criteria specified in the DPT guidelines. He referred to language in ARL Volume 3 Section 1.17, which indicated that departure from the DPT prescribed guidelines is allowable if the methodology is well documented and defensible.

33. Respondent's witness testified that he had taken the photos included in Exhibit C, but that inclement weather had precluded him undertaking a detailed inspection of the subject structures. Based on his observations of the structures and his office's interpretation of the DPT guidelines, he believed an overall completion percentage for the project to be 60% as of January 1, 1999. He affirmed testimony by both Mr. Evans and Mr. Delsart in that he had used the payments made to the contractors as shown in Exhibit F as the basis for his percent complete estimates.

34. Under cross-examination the witness agreed that a minority of the structures had windows and siding.

35. Respondent assigned an actual value of \$5,744,600.00 to Schedule 00222-00-038-000, and \$6,108,700.00 to Schedule 00222-00-039-000 for tax year 1999.

CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 1999.

2. Both parties agree with the land values established by the Respondent. Both parties agree as to the impact to value by the rent restrictions placed on the facility. The number of units is agreed to be 280.

3. Petitioners were willing to stipulate to Respondent's assigned full market value of \$73,320.00 per residential unit, prior to the calculation for percent complete. We affirm this assigned value and reject Respondent's increased value of \$85,000.00 per unit as presented at this hearing.

4. The Board heard a significant amount of testimony with respect to the appropriate manner in which to calculate the value of partially completed residential improvements. Through its Assessors Reference Library (ARL), the DPT has provided assessors a set of guidelines for addressing these calculations. The guidelines set forth specific completion percentages as well as descriptions of the activities associated with those percentages. Text within this same section of the ARL advises that "Deviation from these guidelines should be documented and defensible." It further addresses situations, primarily in rural settings, where use of the specified formula may not be applicable.

5. Based on information collected from actual construction records, Petitioners attempted to comply with the guidelines provided in the ARL guidelines. Petitioners interpreted the DCR's provided by the general contractor to establish what tasks and activities were in progress during sample dates immediately before and immediately after the assessment date. It was Petitioners' position that these reports reflected the actual condition of the structures during the applicable period. Petitioners' findings were then compared to the descriptions found in the ARL to establish completion percentages for each building within the complex.

6. Though we agree that the DCR's provide sufficient information to the Petitioners with respect to what activities may have been in progress on a given set of days, we do not find this data to be adequate for establishing completion percentages as outlined in the ARL guidelines. The DCR's show what general activities were being done on any given day, but not what stage of completion that activity was at. As an example, we may know that the plumbers were on site working in a building, but we do not know if they were at a rough-in or finished state in the plumbing system.

7. Within its Exhibits A and B, the Respondent provided a copy of a standard form used by the Denver Assessor's Office in estimating percentage completion on partially completed structures. This form, though more detailed than the ARL guidelines, follows the same logical sequence of construction activities as found within the ARL. It also provides for more flexibility in developing percentages than the guidelines provided in the ARL. The Board is persuaded that the methodology found within the Respondent's standard form for estimating percentage complete to be within the spirit of the ARL guidelines.

8. However, it is clear from the testimony presented to this Board by Respondent's witnesses that the appraisers deviated from their own established methodology in estimating the completion percentage for the subject structures. Although the standard form was employed by personnel inspecting the structure near the assessment date, notes at the end of the form, as well as testimony by Mr. Van Donselaar, indicate that the percentages ultimately utilized were based, not on these visual estimates, but on capital expenditure data provided to Respondent by the Petitioners.

9. It is clear from the testimony that due to inclement weather, the Respondent did not make an interior inspection during the site visit. The Board believes that a visual inspection of the interior of the structures, coupled with a discussion with Petitioners regarding the capital expenditure data, would have provided sufficient evidence to the Respondent to develop a lower completion estimate as of the assessment date.

10. The Respondent's percent complete calculation based on a field inspection indicated a 55% overall completion stage for the entire project. The Board is persuaded by the Respondent's own notes that the 55% overall completion estimate calculated using its own form would set the upper limits of the percentage complete. However, after consideration of all the testimony and evidence, the Board was convinced that the rough-in plumbing, mechanical, and electrical was not as complete as thought by Respondent, due to a lack of an interior inspection. We feel 5% would be more appropriate than 15% for this item. Therefore, the Board concluded that the overall completion percentage for the entire project should be 45%.

11. The Board also recognizes that Building 1 was more complete than the other buildings as of the assessment date. Therefore, the Board adjusted the percent complete to reflect a higher completion for Phase I of the project. The Board finds that appropriate percentages of completion for the subject facilities to be 50% for Schedule 00222-00-039-000, and to be 40% for Schedule 00222-00-038-000.

12. The Board concluded that the 1999 actual value of the subject properties should be reduced as follows:

Schedule 00222-00-039-000 - \$4,931,486.00, with \$727,300.00 allocated to land and \$4,204,186.00 allocated to improvements.

Schedule 00222-00-038-000 - \$4,595,700.00, with \$816,300.00 allocated to land and \$3,779,400.00 allocated to the improvements.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioners, based on a 1999 actual value for the subject properties of \$4,931,486.00 for Schedule 00222-00-039-000 and \$4,595,700.00 for Schedule 00222-00-038-000.

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 the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 26th day of July, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

This decision was put on the record

JUL 26 2001

Debra A. Baumbach
Debra A. Baumbach

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

J Russell Shaw
J. Russell Shaw

Diane Von Dollen
Diane Von Dollen

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