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| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>TRAILSIDE APARTMENTS LTD.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p> |                                    |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Kirk L. Ward<br/>Address: 2000 N Loop W #110<br/>Houston, Texas 77018<br/>Phone Number: (713) 686-9955 ext 249</p>  | <p><b>Docket Number: 40942</b></p> |
| <p style="text-align: center;"><b>ORDER</b></p>  |                                    |

**THIS MATTER** was heard by the Board of Assessment Appeals on April 25, 2003, Rebecca A. Hawkins and Debra A. Baumbach presiding. Petitioner was represented by Mr. Kirk L. Ward of O'Connor and Associates. Respondent was represented by Michelle L. Bennett, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**Most of Lot 1 Trailside Village 18.625 AM/L  
Also known as 18139 E. Main Street, Parker Colorado  
(Douglas County Schedule No. R0423363)**

Petitioner is protesting the 2002 actual value of the subject property, a 280-unit apartment complex completed in the first part of 2001, located in Parker. It consists of 16 buildings with a total of 811,305 gross square feet. The property is good quality and in good condition.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject is overvalued based on sales used that were not comparable to the subject and due to the zero level of occupancy as of June 30, 2000.

### **Respondent:**

Respondent contends that the assigned value is supported by sales of similar properties during the base period. A 95% stabilized occupancy rate by year-end is reasonable given adequate exposure of the property.

## **FINDINGS OF FACT:**

1. Mr. Kirk L. Ward, O'Connor and Associates, appeared as a witness and presented the appeal on behalf of Petitioner.

2. Mr. Ward did not present comparable sales. He presented the following indications of value for the subject:

|         |                 |
|---------|-----------------|
| Market: | \$16,824,700.00 |
| Cost:   | \$ 7,339,900.00 |
| Income: | N/A             |

3. Mr. Ward testified that the property was completed in 2001, with the first tenants moving into units May 2001. Within seven months, the occupancy went from zero to 45%. The overall occupancy for 2002 was 72.5%. Mr. Ward testified that the subject property was under construction and unoccupied as of June 30, 2000. Mr. Ward testified the comparables used by the Respondent were inappropriate. They were totally completed and at a stabilized occupancy. The Respondent concluded a projected occupancy rate for the subject at 95% based on these comparables.

4. Mr. Ward testified that if the market approach is used, it needs to be adjusted to reflect the lower occupancy rate of the subject. Since a potential buyer would consider the time it takes to lease up the complex, adjustments should be made. Mr. Ward testified to a discount of \$4,871,630.00 for time to lease the property.

5. Based on the market approach, Mr. Ward concluded an indicated value of \$16,824,000.00 (\$60,000.00 per unit) for Trailside Village Apartments.

6. Mr. Ward testified that, due to the under construction status of the subject and the lack of comparable sales with similar occupancy, the best approach to determine value would be the cost approach. The land was purchased for \$1,836,000.00. Based on the level of completion on

June 30, 2000, only 30% to 50% of the construction costs should be used. He used a building value of \$5,503,900.00 to arrive at a total value based on the cost approach of \$7,339,900.00.

7. Under cross-examination, Mr. Ward testified that he reviewed the report by Respondent's witness, Sherry Heydt; however, he did not do any research of his own. He stated there were no similar comparable sales in the Parker area during the base period.

8. Petitioner's witness, Mr. Alfonso Silva, testified to occupancy of Trailside Village Apartments. The subject property was not occupied as of June 30, 2000, was 45% occupied as of January 1, 2002, and had an overall occupancy rate of 72.5% for the year. He stated that free rent and specials programs hurt profits. As a result, profit projections were down 20% in 2002.

9. Under cross-examination Mr. Silva testified to reviewing the report by Ms. Heydt, Respondent's witness. He reviewed rents only, not sales, and did not complete any research himself.

10. Petitioner is requesting a 2002 actual value of \$11,368,000.00 for the subject property.

11. Ms. Sherry Heydt, Certified Residential Appraiser with the Douglas County Assessor's Office, presented the following indications of value for the subject property:

|         |                |
|---------|----------------|
| Market: | \$22,700,00.00 |
| Cost:   | N/A            |
| Income: | N/A            |

12. Ms. Heydt testified that she personally inspected the subject property and looked at two model units. It is typical Assessor practice not to consider occupancy rates. However, since the subject is new construction and needs lease-up time, she considered occupancy in this case. She made minor adjustments for differences in occupancy, but overall, projected what the occupancy would be during the year.

13. Ms. Heydt presented three comparable sales ranging in adjusted sales price from \$16,065,000.00 to \$32,250,000.00 and \$72,365.00 to \$94,850.00 per unit. She analyzed the year of construction, vacancy rates and amenities. She felt that the sales used were similar to the subject property and relied on the market approach in valuing the subject property.

14. Ms. Heydt testified to the following values for the comparables sales:

|        |                      |
|--------|----------------------|
| Sale 1 | \$84,716.00 per unit |
| Sale 2 | \$72,363.00 per unit |
| Sale 3 | \$94,850.00 per unit |

15. Ms. Heydt testified that Sales #1 and #2 are inferior in quality but Sale #3 is similar. Due to the newer age of the subject, she analyzed year of construction and condition. Sales #1 and #2 are inferior to the subject in quality, are older and do not have built in garages. She stated Sale #3 is similar to the subject as it has both built-in and detached garages. It is good quality, but is eight

years older. Sale #3 has a higher price per unit due to stabilized occupancy. All sales are similar to the subject in project amenities. The differences are a tennis court and a movie theater.

16. Ms. Heydt testified that a range of value per unit for the subject should be higher than \$84,716.00 but lower than \$94,850.00. She felt most weight should be given Sale #3 as it is most similar to the subject. She believes the subject would have similar occupancy with adequate exposure to the market.

17. In response to redirect, Ms. Heydt testified that she could not find sales with similar occupancy rates. She believes the subject would achieve 95% stabilized occupancy with exposure to the market. She stated that the value did not need to be reduced due to the occupancy. However, to reflect the occupancy status at the time, she used the lower end of the indicated value range based on the market approach.

18. After questions from the Board, Ms. Heydt testified that no other sales were available in the Parker area during the base period.

19. Respondent assigned an actual value of \$22,700,000.00 to the subject property for tax year 2002.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2002.

2. The Board finds that the most credible information relates to both the adjusted sales presented by the Respondent, and the level of completion and occupancy presented by the Petitioner.

3. The Board found the comparable sales used by the Respondent were not adequately adjusted to reflect differences in location, quality, condition, age and occupancy. The Board notes the lack of location adjustments when comparing the subject in Parker to sales #1 and #3 in Littleton, and sale #2 in Highlands Ranch. The Board feels changes in the rental market from the beginning to the end of the year should have been addressed, since a projected stabilized occupancy of 95% was used.

4. The Board found the level of completion and occupancy rate presented by the Petitioner a valid point, and questions the lack of a more specific adjustment for occupancy in Respondent's report. Ultimately, the level of completion and occupancy are considered to be the most important consideration in this specific instance. As of June 30, 2000, the subject was constructed but unfinished and unoccupied.

5. The Board is convinced comparable Sales #1 and #2 are most similar to the subject property. After applying adjustments for differences in location, condition, quality and level of completion, the sales indicate a range of value, per unit, from \$47,500.00 to \$59,800.00.

6. The Assessor is restricted to using the market approach for properties of this type. The subject property is residential in nature. Accordingly, the market approach is the exclusive method for valuing it for property tax purposes. Colo. Const. Art. X, §20(8)(c). Therefore, the Board could not give any weight to the cost approach. Colorado Revised Statutes 39-1-105(5)(a) states that the income approach is not used for valuation of residential property. Therefore, the Board could not give any weight to the income approach.

7. After careful consideration of all the testimony and evidence presented, the Board was convinced \$55,000.00 per unit is appropriate, indicating a value of \$15,000,000.00 for the subject property.

8. The Board concluded that the 2002 actual value of the subject property should be reduced to \$15,000,000.00.

**ORDER:**

Respondent is ordered to reduce the 2002 actual value of the subject property to \$15,000,000.00.

The Douglas County Assessor is directed to change her 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 20<sup>th</sup> day of June, 2003.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Rebecca Hawkins*

Rebecca A. Hawkins

This decision was put on the record

**JUN 19 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

