

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 52255

Petitioner:

CHERRY CREEK TOWER APARTMENTS LLC,

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 2, 2011, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2009 actual value of the subject property.

The parties stipulated to the qualifications of the witnesses and to the exhibits.

Subject property is described as follows:

**4550 Cherry Creek South Drive
Glendale, Colorado 80246
Arapahoe County Schedule No. 1973-18-3-08-014**

The subject is a twenty-four story class "A" high-rise apartment building. The building was constructed in 2002 and contains 364,669 square feet of gross building area. There are 288 one, two and three bedroom apartment units.

Petitioner is requesting an actual value of \$49,000,000.00 for the subject property for tax year 2009. Respondent assigned a value of \$76,320,000.00 for the subject property for tax year 2009 but is recommending a reduction to \$64,000,000.00.

Petitioner presented the following indicators of value:

Market: \$49,000,000.00
Cost: Not applied
Income: Not applied

Petitioner's appraiser, Richard G. Stahl, a Certified General Appraiser, presented five comparable sales ranging in sale price from \$33,500,000.00 to \$86,000,000.00 and in size from 176,529 to 785,486 square feet. After adjustments were made, the sales ranged from \$143,571.00 to \$210,905.00 per apartment unit.

Mr. Stahl indicated the subject is a newer, good quality high-rise apartment building and there are few comparables for this type of property. The building is also located within Glendale and is separate from the more desirable Cherry Creek North neighborhood nearby.

Mr. Stahl identified three high-rise and two mid-rise comparables in his report. He considered his Sale 1 to have been the best comparable as no net adjustment was applied. Greatest weight was placed on his Sales 1, 3 and 4 indicating a value of \$170,000.00 per unit and a final value of \$48,960,000.00 rounded to \$49,000,000.00.

Respondent presented the following indicators of value:

Market: \$76,320,000.00
Cost: Not applied
Income: Not applied

Respondent's witness, Steve J. Poland, a Certified Residential Appraiser, presented five comparable sales ranging in sale price from \$34,500,000.00 to \$78,000,000.00 and in size from 179,464 to 544,489 square feet. After adjustments were made, the sales ranged from \$157,700.00 to \$270,800.00 per apartment unit.

Mr. Poland stated there were insufficient sales within the base period. He included the May 2005 sale of the subject property and four mid-rise sales in his report. He considered his Sale 1, the subject, to have been the best comparable as no adjustment was applied. Greatest weight was placed on Sales 1 and 2 indicating a value of \$265,000.00 per unit and a final value of \$76,320,000.00.

Petitioner presented Stanton E. Wagner as a rebuttal witness. Mr. Wagner acted as an agent for Petitioner prior to the May 2005 purchase of the subject and the December 2006 purchase of Mr. Poland's Sale 2. Mr. Wagner also represented Petitioner in valuation appeals for 2007, 2008, and 2009. As the agent for the appeals, he was provided rent rolls and income/expense data. Mr. Wagner stated the May 2005 sale was 120% above the market price at the time. This sale, as well as Mr. Poland's Sale 2, were both influenced by a purchaser that overpaid. Mr. Wagner stated the buyer believed the purchase was of prime properties in prime locations. The buyer believed the subject to be located in Cherry Creek and Respondent's Sale 2 to be located in Downtown Denver instead of the Golden Triangle.

Petitioner contends Respondent's valuation does not reflect the market for properties like the subject. The only high-rise sale used is the over inflated price paid for the subject outside of the base period. The other sales are mid-rise properties not similar to the subject.

Respondent contends Petitioner's Sale 1 is not reasonable as it represents floors 20 to 37 of the Ritz-Carlton hotel and condominium development in Downtown Denver. These units were originally intended as condominium units but were converted to rental apartments. Because of the mixed hotel and condominium users, this transaction is not similar to the subject.

Respondent also questioned Petitioner's sales as not similar to the subject, much older and inferior in condition.

Respondent presented sufficient probative evidence and testimony to show that the value of the subject property should be reduced to Respondent's recommended value of \$64,000,000.00.

The Board considered four of the submitted sales to be instructive. Petitioner's Sale 1 and Sale 3 along with Respondent's Sale 2 and Sale 3 appeared most similar to the subject. Each of the sales was adjusted downward 5% for time of sale.

The single significant difference between the sales relates to the average rent obtained per unit. On average, the difference exceeds 30% between the two highest gross rents and the two lowest. Application of an upward adjustment of 30% to the two sales with the lowest gross rents produces an indicated value range of roughly \$200,000.00 to \$250,000.00 per unit. At an average unit value of \$225,000.00 per unit, the 288 units in the subject would have a value of \$64,800,000.00.

ORDER:

Respondent is ordered to reduce the value of the subject property to the recommended value of \$64,000,000.00 for the 2009 tax year. The Arapahoe County Assessor is directed to change his/her record 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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S.

(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.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 30th day of November, 2011.



BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Gregg Near
Gregg Near

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

Milla Crichton
Milla Crichton