

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>PENTERRA PLAZA PARTNERS, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 65677 and 65595</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 26, 2015, Diane M. DeVries, Sondra Mercier and MaryKay Kelley presiding. Petitioner was represented by Jeffrey Q. Jackson, Esq. Respondent was represented by Mitch T. Behr, Esq. Petitioner is protesting the 2012 actual value of the subject property.

The parties agreed to consolidation of Docket Nos. 65677 and 65595.

Subject property is described as follows:

8100 East Union Avenue, Denver, Colorado
Sch. Nos. - Docket No. 65677: See Respondent's Exh. B, page 1.
Docket No. 65595: See Respondent's Exh. A, page 1.

The subject property consists of thirty condominium units that were unsold as of January 1, 2011 by the original developer and purchased by Petitioner in February, 2012. Penterra Plaza, located in the Denver Technologic Center, was built in 2003 and includes a seven-story office building, three-story underground parking garage, and 21,310 square feet of retail space. The 24-story residential tower includes 266 luxury condominiums, a community sun terrace, a game/television room, business center with conference room, a guest suite for visitors, fitness facility, and a full-time concierge. The 30 subject units, three of which were unfinished (Units 2001, 2401 and 2405), range in size from 1,109 to 2,841 square feet.

Petitioner is requesting a total actual value of \$10,001,882 for tax year 2012. Respondent assigned a total value of \$14,728,900.

UNIT #	REQUESTED VALUES	ASSIGNED VALUES
Unit 208	\$210,705	\$295,000
Unit 714	\$210,819	\$302,500
Unit 801	\$242,503	\$375,300
Unit 803	\$210,819	\$310,600
Unit 809	\$220,420	\$321,500
Unit 814	\$210,819	\$311,800
Unit 903	\$210,819	\$328,100
Unit 909	\$220,420	\$381,700
Unit 1201	\$289,274	\$432,900
Unit 1211	\$253,769	\$415,800
Unit 1401	\$305,444	\$426,000
Unit 1410	\$267,955	\$396,200
Unit 1501	\$305,444	\$456,100
Unit 1609	\$191,594	\$299,300
Unit 1610	\$267,955	\$393,300
Unit 1701	\$305,444	\$461,900
Unit 1710	\$267,955	\$395,600
Unit 1809	\$287,805	\$398,000
Unit 1901	\$510,143	\$671,400
Unit 1908	\$357,334	\$530,000
Unit 2001	\$232,137	\$792,600
Unit 2008	\$393,924	\$568,800
Unit 2101	\$562,381	\$792,600
Unit 2108	\$393,924	\$571,900
Unit 2201	\$562,381	\$792,600
Unit 2205	\$562,381	\$622,500
Unit 2301	\$562,381	\$699,400
Unit 2306	\$506,361	\$713,700
Unit 2401	\$516,510	\$649,300
Unit 2405	\$371,361	\$622,500

Petitioner's witness, Mills H. Ford, Certified General Appraiser and owner of Ford & Company Real Estate, LLC, discussed a construction defect lawsuit filed on May 31, 2010 by the Homeowner Association, which named the subject's developer as the plaintiff. While the suit was dismissed without prejudice in July of 2010, Mr. Ford argued that its stigma impacted subject's value and marketability.

Mr. Ford addressed the subject's market value in two steps, (1) concluding to baseline values via the market approach; and (2) adjusting for the impact on values from the stigma of the lawsuit.

Step One: Mr. Ford categorized the subject units by size and floor, concluding to eight groupings. Identifying 52 MLS-reported sales in the extended base period, he applied time

adjustments and derived price-per-square-foot values for each of the 30 units that totaled \$14,762,926.

Step Two: Mr. Ford interviewed Chuck Gargotto, listing broker for Penterra Plaza's residential units, who considered the stigma from the lawsuit to be significant and who estimated value of the residential units at \$10,000,000. Mr. Ford then allocated a discounted value to each unit's base value and concluded to thirty indicated values for a total of \$10,001,882, representing an average discount of 32.25%.

Respondent's witness, Melissa J. Reed, Certified Residential Appraiser for the Denver Assessor's Office, reviewed the thirty mass appraisals (including unfinished Units 2001, 2401, and 2405) selected for the Board of Equalization appeal and either concurred with their values or concluded differently. Adjustments were made for floor and view, garage spaces, ceiling heights, interior finish, and seller concessions. She concluded to a value totaling \$14,728,900 for the subject units.

Ms. Reed argued that the 2010 lawsuit did not affect the values of the units in the residential tower. She referenced Item 24 on the suit itself (Respondent's Exhibit A at page 40), which notes that the construction defects concerned master common elements located in the parking garage and were unrelated to the units in the residential tower. She saw neither correlation between the lawsuit and the value of the subject units nor stigma affecting the units in question and declined to make any further adjustments in her analysis.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2012.

The Board finds Respondent's Market Analysis more reliable. Each unit was independently analyzed with three comparable sales and adjustments for seller concessions, floor, view, room count, ceiling heights, garage spaces. Units 2001, 2401 and 2405 were correctly valued as shells.

The Board has not been presented with sufficient information from Petitioner as to the extent, if any, of the impact that the May 2010 law suit had on the value of the subject property. Petitioner's witness provided neither base period market data substantiating the claim that a stigma existed nor sales data to support his 32.25% adjustment for the stigma. The estimated \$10,000,000 hearsay value was not supported by market data.

The Board declines to consider the impact on the subject value from the second alleged lawsuit (Respondent claims it was never filed) addressing construction defects. Petitioner's witness quotes a settlement date of December 2012, which is post-base period which ended in June of 2010. See *Padre Resort, Inc., v. Jefferson Bd. Of Equal.*, 30 P.3d 813, 815 (Colo. App. 2001). ("Because actual economic conditions existing outside the base period may not be considered in arriving at the taxable value of property, . . . it follows a fortiori that projected and estimated economic conditions that may exist beyond that period may not be considered, even if data underlying those projections are known during the base period.")

ORDER:

The petition is denied.

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-nine 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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-nine 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 15th day of July, 2015.



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

Milla Lishchuk

Milla Lishchuk

BOARD OF ASSESSMENT APPEALS

Diara M. DeVries

Diara M. DeVries

Sondra W. Mercier

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MaryKay Kelley

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