BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 65697
Petitioner: **VILLAGE AT CITY CENTER, LLLP,** v. Respondent: **ARAPAHOE COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 13, 2015, Debra A. Baumbach, and James R. Meurer presiding. Petitioner was represented by Jay Pickard, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2013

The parties stipulated to the admission of both exhibits and witnesses.

The subject property is described as follows:

642 S. Fairplay St. Aurora, CO
Arapahoe County Schedule No. 1975-18-1-15-008

The subject of this appeal consists of a 4.27 acre high-density residential condominium development parcel located in the Village at City Center Condominium Project at the northeast corner of Fairplay St. and Exposition Ave. in Aurora, Colorado. The parcel has frontage on three streets including Fairplay St. to the west, Exposition Ave. to the south, and Center St. to the north. The subject parcel constitutes the buildable area for the remaining 83 units planned for the existing condominium project. All utilities are publically provided, and have been installed to each of the projected building footprints. Upon completion, the total City Center Condominium Project is projected to contain 163 units, of which 80 units have been completed and sold. Common elements for the project consist of open space, a 1,600 square foot clubhouse, and an outdoor recreational area with pool.

Petitioner presented two arguments relative to the subject property. The first was a legal ownership issue, and the second was a valuation issue. These arguments are summarized below:

1. Petitioner argues that it had no legal ownership interest in the subject property as of the valuation date. Rather, the parcel was a common element of the Village condominium project via the condominium declaration and a management agreement executed with Norstar Residential, LLLP (Norstar) dated October 29, 2003 and October 31, 2003, respectively, and that Norstar controls all future development rights for the 4.27 acres. Therefore, *ad valorem* taxes should not be levied against Petitioner for the subject acreage.

2. Petitioner argues that Respondent's valuation of the parcel is flawed, and that the comparable land parcels used in Respondent's sales comparison approach are dissimilar to the subject parcel in that they do not represent condominium land sales.

I. Ownership Issue.

Petitioner and Respondent submitted briefs at the hearing supporting their respective positions and, at the request of the Board, presented supplemental briefs subsequent to the hearing.

After reviewing the exhibits and briefs and considering the testimony presented at the hearing, the Board finds that Petitioner is the record owner of the subject property. Petitioner became the owner by virtue of an October 29, 2003 General Warranty Deed that conveyed the fee simple interest in the subject property from BCorp to Petitioner. No other deeds presented to the Board reflected a transfer of the fee simple interest in the property to any other entity. The Board also notes that Petitioner filed the petition in this appeal as the "property owner".

The Board is not persuaded by Petitioner's contention that Norstar allocated all rights, title and interest to the subject property to the individual owners of the condominium units when it filed the Condominium Declaration on October 29, 2003.

The Board was not presented with any evidence of Norstar having any apparent or alleged ownership or other interest in the Property at the time it filed the Condominium Declaration on October 29, 2003. It was not until two days later, on October 31, 2003, when Petitioner entered into a Management Agreement with Norstar, that certain rights and responsibilities were granted to Norstar in relation to the subject property.

The Management Agreement makes it clear that Petitioner retained ownership of the subject property. The Management Agreement defines Petitioner as the "Owner" of the property, while Norstar is defined as an "Independent Contractor" -- contracted by Petitioner to perform certain activities relating to the development of the property. Petitioner, as the "Owner" retained valuable rights in the subject property, while Norstar's rights were limited by the Management Agreement.

Petitioner's issuance of numerous deeds to Norstar conveying portions of the property in fee simple (as various portions of the property were developed) provides additional evidence of Petitioner's ownership of the subject property. Petitioner has issued numerous Special Warranty Deeds (copies of some of those deeds were presented as Respondent's Exhibit B) to Norstar conveying portions but not all of the condominium real estate. The deeds expressly state that Petitioner ". . . has good right, full power and lawful authority to grant, bargain, sell and convey the [Property] in manner and form aforesaid, and that the same is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances of whatever kind or nature . . ." If "all authority to develop, sell, and convey the real property" was transferred from Petitioner to Norstar on the date of the filing of the Management agreement (as Petitioner claims in its Supplemental Brief re: Ownership of Parcel, pg. 2 at paragraph 7), there would have been no need for Petitioner to issue the deeds to Norstar.

Moreover, Petitioner's January 15, 2008 sale of the ±6 acres to City Center Lofts, LLLP for a price in excess of $1.7 million provides further support that Petitioner retained ownership of the subject property following the 2003 creation of the condominium.

The Board believes that Petitioner is a "Declarant" within the definition set included in the Colorado Common Interest Ownership Act. Section 38-33.3-103(12), C.R.S. defines "Declarant" as:

> "any person or group of persons acting in concert who: (a) as part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or (b) reserves or succeeds to any special declarant right."

The Board finds that under the terms of the Management Agreement, Petitioner and Norstar acted in concert as part of a common promotional plan to build and sell condominium units in the development. Testimony at the hearing supports the Board's finding that Petitioner and Norstar were acting in concert in developing the property. The Board also notes that Petitioner and Norstar appear to have common officers or managers. Kelly Begg signed the February 2007 Amendment to the Declaration (Exhibit D of Respondent's Brief) as the President of Norstar, Inc., who is the manager of Norstar. Kelly Begg also signed for Petitioner on several real estate contracts (See Petitioner's Exhibit 7). The Board also notes that Greg Begg signed the Special Warranty Deeds (Exhibit C of Respondent's Brief) as President of Village at City Center 1, Inc., Petitioner's general partner.

As a declarant, Petitioner reserved development rights to add additional units and common elements on the real property (See Article 17.2 of the Declaration). The Board was not convinced that Petitioner relinquished or otherwise completely transferred the development rights to Norstar.

The Board was also not convinced that the subject property is a "common element". The Declaration discusses how additional units and common elements will be added to the community as the project is developed over time. Section 3.2 of the Declaration requires the location of common elements to be shown on the condominium map. The original condominium

map attached to Petitioner's brief does not indicate that the entire subject property is a common element. To the contrary, Note 11 on the condominium map indicates that all areas "outside of existing and future building lines" are or will be common elements. The condominium map was drawn to show fire lanes, utility locations and easements – all in locations that support the construction of future condominium units. The Board finds that the fire lanes, utility locations and easements as shown on the condominium map sufficiently delineate the future building lines (i.e. the areas where the future buildings will be constructed) so that the developable areas on the subject property are not common elements. The exclusion of development rights from the definition of common elements (see Articles 1.6 and 1.19 of the Declaration) is further support that the subject property (where the future development will occur) is not a common element.

In sum, the Board finds that Petitioner has sufficient ownership interest in the subject property to be taxed for ad valorem purposes.

II. Valuation Issue

Petitioner did not present an appraisal; however, considers the value of $415,000 assigned for tax years 2011 and 2012 to be most reflective of value for the subject parcel. Respondent presented an appraisal reflecting a market value of $910,000; however, is deferring to the Board of Equalization's assigned value of $655,097 (land value only; improvement value is not in dispute). Given that Petitioner provided no appraisal and was testifying in order to impeach Respondent's appraisal and value, the Board, Petitioner, and Respondent concurred that Respondent's witness would testify first regarding the appraisal and concluded value, and subsequent to this testimony, Petitioner would proceed with any effort to impeach Respondent's analysis.

Respondent's witness, Ms. Kathryn Dowling, an appraiser with Arapahoe County Assessor's Office, presented a market (sales comparison) approach that included five comparable land sales ranging in price from $330,000 to $1,713,400, or $7,317 to $23,571 per unit. Sale dates ranged from January of 2008 to May of 2012. Adjustments to the comparable sales reflected differences in conditions of sale (e.g. REO), date of sale, location, site attributes (e.g. frontage and access), acreage, utilities, and density. After adjustments, the five sales ranged from $10,098 to $11,786 per unit. The proposed use of all of the comparable land sales was high density, attached residential, involving either apartments or condominiums. Respondent placed weight on sales Nos. 2, 3, and 4 with most weight on No. 2, and reconciled to a value of $11,000 per unit for the 83 units or a land value of $910,000 rounded. Ms Dowling testified that these were the best sales available during the statutory base period and could not support any difference in value between parcels intended to apartment use, and parcels intended for condominium use.

Ms. Dowling also prepared an alternate land value analysis using a price per square foot methodology. In this analysis, the unit price per square foot of the five comparable sales referenced in the analysis above ranged from $1.67 per square foot to $12.01 per square foot prior to adjustment, and employing the same line item adjustments, ranged from $3.08 to $4.80 subsequent to adjustment. Again, weight was placed on sales Nos. 2, 3, and 4 with most weight on No. 2, and reconciled to a value of $4.50 per square foot for the 186,185 square foot land area

concluding to a land value of $840,000 rounded.

Placing most weight on the per buildable unit of comparison. Ms. Dowling reconciled to a value of $910,000 for the subject 4.27 acres for 2013.

It should be noted that only the 4.27 acre partially developed land area was valued in the report. Although referenced, the common area for the existing condominiums and the common area amenities were not valued in the analysis, and were not the subject of this hearing.

Subsequent to Ms. Dowling's testimony, Mr. David Burrup, with Elite Property Services, Inc., acting in the capacity of a tax consultant, testified on behalf of Petitioner. Mr. Burrup questioned the comparability of the sales used in Respondent's analysis. Specifically, he argued that Sale No. 5 was a former daycare and church, and the remaining sales were proposed for rental apartment use, rather that for condominium use, and that no adjustment for this dissimilarity was provided by Respondent. Petitioner also argued that there were a number of inconsistencies in Respondent's report (*e.g* the market area discussion) causing the conclusion of value to be further suspect.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2013 valuation of the subject property was incorrect.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Petitioner did not meet this burden.

Relative to value, the Board concludes that the comparable sales used by Respondent and the adjustments to those sales best reflect the market value for the subject property. The Board also acknowledges the paucity of sales during the base period for properties similar to the subject. The Board concurs with Respondent that Comparables No. 2 and 4 with adjusted values per unit ranging from $10,098 to $11,550 should receive the most weight in the final analysis. Respondent's conclusion of value of $11,000 per unit falls within this adjusted range, and is supported by the data and analysis contained within the appraisal report. The Board further concludes that Petitioner's argument that condominium land is significantly lower in value than apartment land was not supported by the exhibits and testimony.

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 8th day of January, 2016.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

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

Milla Lishchuk