

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

Docket No.: 66474

Petitioner:

CREEKSIDE TWO ON INVERNESS, LLC,

v.

Respondent:

ARAPAHOE COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 26, 2016, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2015 actual value of the subject.

The subject property is described as follows:

**61 Commercial Condominium Units
88 Inverness Cir E, Englewood, CO
Arapahoe County Parcel Nos.: 2075-35-2-14-001+60**

The Board admitted Respondent's Exhibits A, B, C and D into the evidence noting Petitioner's objections. The Board also accepted Petitioner's Exhibits 1 and 2. Based on Respondent's objection as to the timeliness of Petitioner's Exhibit 3, the Board did not admit it except for 16 pages containing corrections to Petitioner's Exhibit 1. The parties agreed to insert the corrective pages from Petitioner's Exhibit 3 behind the corresponding pages within Petitioner's Exhibit 1.

The subject of this appeal consists of 61 legal commercial (office) condominium units located within ten of the buildings in the Office Court on the Inverness Project in Englewood, CO. This common interest community is located in the Inverness Business Park, along the north side of the Inverness Golf Course, and consists of 14 total buildings with 97 condo units on 9.65 acres. The buildings were constructed in two phases taking place in 2001 and 2005, and are the same design and quality throughout. The subject units range in size from 721 square feet to

2,733 square feet, and are currently under the ownership of the original developer, Creekside Two at Inverness. These units are 90% occupied by various smaller business/professional tenants. The project is somewhat of a hybrid in that it contains the units owned and retained by the developer and available for lease or sale, as well as units that have been sold to third parties (approximately one third of the units within the development have been sold to third parties; values of these units are not at issue). According to testimony, Petitioner intends to maintain this current level of ownership at a 51% interest of the units within the development project.

At the beginning, of the hearing Respondent moved to dismiss Petitioner’s appeal arguing that Petitioner’s bulk-based valuation of the subject condominium office units (e.g., valuing the subject as a single 61,363 square foot unit as opposed to 61 individual subject parcels) is contrary to the Colorado law as stated in Sections 38-33-104 and 38-33.3-105, C.R.S. and reiterated in the Assessor’s Reference Library (“ARL”), Volume 3, Page 7.59. Respondent argued that the only acceptable methodology for valuing the subject is by valuing each unit separately. In addition, Respondent pointed out that Petitioner’s value conclusion of \$11,750,000 derived by the use of the sales comparison approach that valued each condominium unit individually exceeded Respondent’s assigned value of \$11,361,405.

In response, Petitioner’s counsel contended that Sections 38-33-104 and 38-33.3-105, C.R.S. were inapplicable as they pertain only to the assessment of condominium ownership, not valuation. Petitioner also argued that valuation of the subject, whether on individual basis or not, must take into consideration the subject’s highest and best use as dictated by the present market conditions. Petitioner testified that it was their opinion that leasing, rather than sales of the subject parcels would produce the highest return over time and therefore an income approach, rather than a market approach would be the most reliable approach in valuing the subject.

Petitioner is requesting an aggregate actual value of \$5,940,000 for the subject units for tax year 2015 based on the bulk valuation indicated by Petitioner’s income approach.

Valuing the subject condominiums on individual basis, Respondent assigned \$11,361,405 as the subject’s value for 2015, which is supported by the appraised value of \$11,687,365 derived from Respondent’s sales comparison approach. Respondent recommended a reduction in value of two units: Unit A 106 from assigned value of \$505,605 to \$491,940 (sales comparison approach) or \$325,418 (income approach) to account for its large gross building area; and Unit B 105, from assigned value of \$142,820 to \$137,180 (sales comparison approach) or \$85,968 (income approach) to correct a clerical error in its initial valuation.

Petitioner presented the following indications of value for the subject:

Cost		not developed
Income		\$5,940,000
Market Aggregate		\$11,750,000
Bulk Sales Approach		\$9,030,000
Development Approach		\$10,670,000

Petitioner's first witness, Mr. Ken Joseph, President of Office Court Companies, Inc. and Manager of Creekside, LLC testified regarding the history of the subject property and specific facts relating to the subject units as of the assessment date. Mr. Joseph testified that the highest and best use of the units is for rentals, and that there have only been one to two sales of the units each year since they were constructed. Mr. Joseph testified that he had reviewed both party's appraisals and he did not agree with the value conclusions as stated in either, and further indicated that an income approach based on income and expenses for the subject would be the best indication of value for the subject units. This witness emphasized that Creekside owned 51% of the units in the project and keeping this ownership interest and percentage reflected the highest and best use for the units.

Petitioner's second witness was Mr. William M. James, Appraiser, MAI, CCIM, who developed and testified to his appraisal report pertaining to the subject units. Mr. James utilized income approach to conclude to the "bulk" value of \$5,940,000, rounded. The witness applied rental rate of \$17.67 per square foot and added \$12,000 of "other income" to conclude to the total potential gross income of \$1,096,284. After subtracting 10% for vacancy and collection loss and operating expenses of \$511,853, the witness concluded to net operating income of \$474,803. After application of the 8.00% capitalization rate, Mr. James arrived to a value of \$5,940,000 via the income approach. Mr. James testified that if he were to value the subject condominiums on individual basis, his methodology and value conclusion would have been the same as that derived via the "bulk" valuation.

Mr. James also testified as to his application of the development approach in valuing the subject. He defined development approach as one that takes into consideration both the rental income as well as revenue from sales of individual units. The witness testified that this approach was applicable to valuation of the subject because it replicates the subject's present business model. Mr. James concluded to a total value of \$10,670,000 for the subject via the development approach.

In addition, Mr. James completed a bulk sales approach in valuing the subject. The witness selected seven comparable sales, ranging in sale price from \$119.58 to \$182.87 per square foot. After adjustment, the prices ranged from \$110.85 to \$158.68 per square foot. The witness concluded to the value of \$9,030,000 via the sales comparison approach.

Placing equal reliance upon the income, sales and development (income) approaches, the witness concluded to \$8,500,000 as the subject's final opinion of value for 2015 tax year.

The next witness to testify was Ms. Kathryn Dowling, an appraiser with the Arapahoe County Assessor's Office. Ms. Dowling developed an appraisal report on the subject and concluded to a separate value for each of the units, as well as testified regarding the criteria and specific attributes of her analysis.

Within her report, a sales comparison approach was developed employing six comparable sales ranging from \$122.70 per square foot to \$205.08 prior to adjustment, and \$184.51 to \$194.13 subsequent to adjustment. Major adjustments to the comparables consisted of condition, gross building area, number of units, and view. All of the sales were located in the subject

project and Ms. Dowling also referenced five sales outside the project as a test of reasonableness. Ms. Dowling concluded to a value of \$180.00 per square foot for the standard units and \$205.00 per square for the golf course units. Respondent's witness concluded to a total value of \$11,687,365 via the sales comparison approach.

Ms. Dowling also completed an income approach referencing multiple rent comparables and reconciling to a \$17.00 rent per square foot for the typical units and \$19.00 per square foot for the golf course units on a modified gross basis. Vacancy and collection loss was estimated at 5% of effective gross income, and expenses were estimated at 18% to 20% of the gross lease rate. The net operating income was then capitalized at base rate of 7.5% plus a 3.25% effective tax rate. Ms. Dowling concluded to the subject's 2015 value of \$7,369,720.

Placing primary weight to the sales comparison approach, the witness reconciled to the final value of \$11,687,365 for the subject property.

In addition to the appraisal report provided by Ms. Dowling, Respondent presented rebuttal documents including a marketing brochure for the subject units which referenced that the units were listed both for sale and for lease. The "outside" broker involved in the sale and leasing of the units was referenced in the brochure as Ms. Heather Burns of BRC real estate.

Petitioner's primary argument was that Respondent should have considered and given primary weight to an income approach rather than a market approach considering that majority of the subject units are leased to various tenants and are rent-producing properties. Petitioner further argued that the sales comparison approach is not reliable in arriving to the subject's value as the market for the subject condominiums is very small, involving only a hand full of sales each year. According to Petitioner, the subject property was intended as a "specialty product," which is essentially a rent-producing property with occasional sales of the units whenever additional revenue is necessary during changing market conditions.

Petitioner argued that both Petitioner's and Respondent's income approaches are basically the same, and that the difference between the two is difference in formatting. Petitioner pointed out that although Respondent formatted its income approach to separate values for each individual unit, with the exception of the four golf course view units, all variables including market rent, vacancy and collection loss, effective gross income, expenses, net operating income and capitalization rate are the same for all units. According to Petitioner, because the variables affecting the value within Respondent's income approach are basically the same across the board for all units, Respondent's value conclusion derived via the income approach would have been the same even if analyzed in bulk rather than on individual basis.

Given the information presented and specifically the nature and physical characteristics of the subject, the Board finds that the most persuasive valuation of the subject's 61 units is on individual, rather than bulk basis. Petitioner did not present any information suggesting that the subject units were, at any point of time, marketed, sold, or leased on a bulk basis. To the contrary, the evidence before the Board indicates that each unit has been treated as a separate entity for purposes of sale and/or rent. Moreover, the Board finds that valuation of each unit individually results in a more accurate indication of value as it takes into account the premium

price associated with units that have superior golf course views. Further, the Board finds that individual valuation of the subject units is harmonious with the statutory law cited by Respondent. The Board concurs with Respondent's argument that the sales approach-aggregate individual value provided by Mr. James was the only allowable approach per statute, and that the result of this approach actually exceeded the values provided by the County.

The Board finds the appraisal methodology and conclusions presented by Respondent to be most persuasive. Notwithstanding the fact that, as of the date of value, almost 90% of the subject 61 units were leased to third parties, the Board concludes that a sales comparison (market) approach is the customary, most acceptable, and most valid methodology to provide an opinion of market value for properties such as the subject commercial condominium units. This conclusion is further supported by the comments, as noted on Page 92 of Respondent's appraisal regarding the lack of weight placed on the income approach. In addition, the overall validity of an income approach is considered suspect considering the 59%Δ between the conclusion of value via Respondent's income and market approaches. The Board takes significant note of the listing brochure found in Respondent's Exhibit B that clearly indicates units are available for purchase.

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, it is the conclusion of the Board that individual unit values developed via a market approach using the comparable sales are required per statute and are most representative of the market values for the subject units. Based on the exhibits presented, Ms. Dowling's testimony, and her analysis in the appraisal report, no impeachment of Respondent's conclusions of value could reasonable be accomplished.

ORDER:

The Board grants a reduction in 2015 valuation of Unit A-106 and B-105 to Respondent's recommended values of \$491,940 and \$137,180, respectively. The Board upholds the 2015 CBOE values of the remaining units.

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 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-nine days after the date of the service of the final order entered).

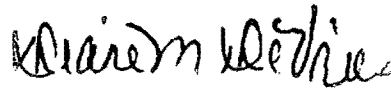
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

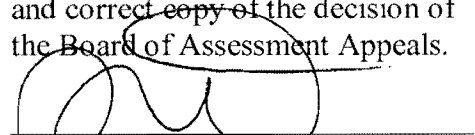
DATED and MAILED this 4th day of August, 2016.

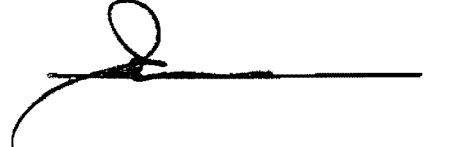
BOARD OF ASSESSMENT APPEALS



Diane M. DeVries

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



Mila Lishchuk

James R. Meurer

