

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>S-K LAKEVIEW LLC,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 68305</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 26, 2016, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by H. Michael Miller, Esq. Respondent was represented by Rachel Bender, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Petitioner offered to stipulate to the expert witnesses and the exhibits. Respondent agreed to the qualifications of the witnesses and to Petitioner’s Exhibits 1, 2 and 3. Respondent objected to the admission of Exhibits 4 through 9 as they were not timely submitted and Exhibit 4 is not complete. The Board admitted the expert witnesses, Respondent’s Exhibits A and B and Petitioner’s Exhibits 1 through 3. The parties agreed to the consolidation of Docket numbers 68305 and 68306 for purposes of the hearing with the understanding the Board will issue separate decisions for each Docket.

For Docket 68305 the subject property is described as follows:

**Lakeview Senior Living
7390 W. Eastman Place
Lakewood, CO 80227
Jefferson County Schedule No. 453795**

The subject was constructed in 2008 and contains 129 units. The building is age-restricted to residents 65 and older and is described as an independent living facility. The complex contains studio, one bedroom and two bedroom units. Units within the complex all have interior access with most ground floor units also accessible from the exterior. The interior features a two story entry and

reception area, dining and common room as well as numerous amenities such as salon/barbershop, fitness center, chapel, game room, community/social rooms, library, theater, bistro, 24 hour cafe and two laundry rooms on each floor. There is a common kitchen, two elevators, exterior balconies or patios for each unit with a limited number of garages and concrete off-street parking.

Petitioner's witness Mr. Richard G. Stahl, a Certified General Appraiser, described the subject as a senior living facility. The property is designed for the first level of senior care as an independent living facility. Mr. Stahl indicated there are different levels of care within the senior housing industry. Levels beyond independent living include assisted living; skilled care and nursing homes.

Petitioner's witness presented a market (sales comparison) approach containing four comparable sales ranging in sale price from \$12,614,100 to \$78,000,000 and in size from 86,977 to 256,718 square feet. After all adjustments were made, the sales ranged from \$101,695 to less than \$126,991 per unit.

Mr. Stahl considered the subject to represent a going concern and performed a "use value" to identify and allocate the components (land, improvements, personal property and intangible assets) within the comparable sales. The witness stated the income approach is the most reliable measure of value but Colorado regulations limit determination of actual value to only the sales comparison approach.

In his appraisal Mr. Stahl referenced the national market and provided an illustration of a contract for a portfolio of four unidentified properties. The contract presented was the ninth amendment to a transaction that began April 10, 2014. The ninth amendment was dated July 24, 2014. The exhibit illustrates an average of 48.9% of the sale price was represented by real estate with the remainder attributed to personal property and intangibles.

Petitioner's Sale 1 was located in Colorado Springs and was described as a Continuing Care Retirement Community (CCRC). This facility provides for the full spectrum of senior care. The property is the largest of the comparable sales and is located on a 26 acre site. The sale price of the taxable real estate was reported as \$24,900,000 by the county assessor. Sale 2 is the subject property; reported as containing 118 units with an allocation of \$12,000,000 to the real estate by agreement of both parties to the transaction. Sale 3, one of two properties - sold as a portfolio by the same seller, was only 38% occupied at the time of the closing. This facility was designed for both assisted living and memory care. No adjustment was applied to this sale price for intangibles. Sale 4, also an independent living facility, contained a mixture of studio, one and two bedroom units. No adjustment was applied to this sale price for intangibles.

After identifying and adjusting for intangibles, the comparable sales ranged from \$101,695 (the subject) to \$126,991 per unit. Petitioner's witness applied qualitative adjustments from this point forward. Sale 1 was considered superior in location due to a greater number of nearby amenities; superior in land to building ratio; superior in the number of skilled beds; inferior due to year of construction and superior in income characteristics as a CCRC. No adjustments were made to Sale 2, the subject. Sale 3 was smaller in average unit size, four years newer and had better income

characteristics than the subject and was rated superior overall. Sale 4 had smaller units but because it was within a better neighborhood was rated superior overall. Mr. Stahl concluded to \$100,000 per unit and a value for the real estate of \$12,900,000.

Petitioner is requesting an actual value of \$12,900,000 for the subject property for tax year 2015.

Respondent assigned a value of \$18,351,500 for the subject property for tax year 2015 and is presenting a site specific appraisal with a conclusion of \$18,447,000 in support of the actual value.

Respondent's witness, Mr. Steve J. Poland, a Certified Residential Appraiser, presented a Sales Comparison Approach to value noting that the best sales for a property such as the subject would be other independent living facilities. The witness testified that all the confirmed, qualified sales found of independent living complexes also had other services offered such as assisted living, skilled nursing and memory care. Citing insufficient information from the market to extract a separate value for the independent living portion of the qualified sales, Mr. Poland concluded the subject, as an independent living facility not subject to licensure and regulation by the State, was most similar to apartment complexes.

Mr. Poland's Sales Comparison Approach contained five comparable sales ranging in sale price from \$24,000,000 to \$45,250,000 and in size from 155,064 to 315,991 square feet. After all adjustments were made, the sales ranged from \$142,000 to \$145,000 per unit.

Sale 4 was adjusted for personal property; no other personal property adjustments were applied. Further adjustments to the sales were qualitative. All of the comparable sales were larger than the subject and rated as slightly superior as a result. Sale 3, with a greater than ten year age difference, was rated as slightly inferior. Overall comparison of the sales suggested all sales were similar to the subject except Sale 3 rated as slightly inferior overall. The witness concluded to a value of \$143,000 per unit resulting in an opinion of actual value of \$18,447,000.

In rebuttal, Petitioner's witness, Mr. Shawn O'Conner, testified regarding his experience in the senior housing and senior health care industry. Mr. O'Conner provided additional information defining the attributes of senior housing noting an industry emphasis upon security that differs significantly from the apartment market. The senior housing market requires enclosure of the facility which is at odds with the residential market. The witness also stated that senior housing operators will often contract out certain services. Petitioner's witness also dismissed the use of apartments as comparable properties noting a disparity in the demographics being sought. Mr. O'Conner testified there have been no arm's length sales of similar properties (excluding the subject) during the valuation period being applied.

In further rebuttal, Petitioner's witness, Mr. George Swintz, testified regarding his experience as a commercial broker, developer and consultant for senior housing projects. Regarding Petitioner's use of Sale 3, Mr. Swintz noted the reported sale price represents a value above and beyond the cost of construction. This component reflects the buyer's anticipation of future profit. In further support of the business value portion of the transaction, the witness noted the buyer retained staff from the

original developer. This witness also indicated business values typically range in the 15% to 20% range. In support of this comment, the witness stated that owners desiring to lease the going concern operation require a 30% return.

Petitioner contends Respondent has relied upon inappropriate comparable sales. Independent living facilities are designed with communal kitchens and social areas to encourage residents to associate outside of their units. Hallways are typically wider to accommodate older residents; individual kitchen facilities are limited and there are no stoves; leases are on a month to month basis and the amenities are much different than those demanded by apartment dwellers. In contrast to apartments much of the value in the facility comes from services and, as the residents age and move into units providing more and more care from more and more qualified staff, these services result in a significantly greater portion of the value on the business side.

Respondent contends independent living facilities, since they do not require regulation by the State, are essentially the same as apartment complexes offering a different, though similar, level of amenities. Apartment buildings also have no business value therefore avoiding the allocation method profered by Petitioner. Respondent questions Petitioner's use of TD-1000 information for multiple reasons; confidentiality and subjectivity among them. Respondent asserted a willingness to consider the sale of the subject but was unable to obtain needed information from the parties involved. Petitioner's exhibit, pages 45-51, is unreliable because Petitioner has so severely redacted the document it is not possible to confirm any of the information. Respondent's witness asserts that business value is typically in the 15% to 20% range whereas Petitioner's witness is claiming an allocation of greater than 50% of the sale price.

The Board finds Petitioner to have been more convincing than Respondent. The Board was concerned with Respondent's reliance upon comparable sales that appear to represent a different highest and best use than that of the subject. For the subject to operate in a similar manner as an apartment would require substantial investment to remove facilities not common in apartments (e.g. commercial kitchens and common dining areas) and still leave the investor with apartment units lacking typical amenities. Respondent supported the use of apartment sales by stating the incomes from the two types of properties are similar when, in fact, the sources of that income vary substantially with the bulk of the difference in senior housing represented by services. The Board also was not compelled by Respondent's use of apartment transactions when, as stated, there were qualified sales of other senior living communities that could serve as a test of reasonableness for the value conclusion.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

The Board concluded that the 2015 actual value of the subject property should be reduced to \$12,900,000.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to \$12,900,000.

The Jefferson County Assessor is directed to change their records 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-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 5th day of October, 2016.



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 Lishchuk

Milla Lishchuk