

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)	
)	
ERICKSON RETIREMENT)	
COMMUNITIES, LLC, <i>et al.</i> ,)	
)	
)	Case No. 09-37010 (SGJ)
)	
)	Chapter 11
)	
Debtors)	(Jointly Administered)
)	

AFFIDAVIT OF LARRY SHOUSE

COMES NOW Larry Shouse, who, having been first duly sworn, deposes and states:

1. My name is Larry Shouse. My business address is 301 Wilcox Street, Castle Rock, Colorado 80104.

2. I am the Deputy Assessor, Appeals in the Office of the Douglas County Assessor. I have been employed as an appraiser by the Office of the Douglas County Assessor for the last 19 years. I have been a licensed appraiser for the last 18 years.

3. In Colorado *ad valorem* property tax valuations of apartment buildings, only the sales comparison method may be used.

4. The sales comparison approach as it is required to be applied in Colorado *ad valorem* property tax valuation works as follows. The subject is valued as of the valuation date, which is June 30 of the year prior to the tax year in question (the valuation date is sometimes called the appraisal date). In the case of 2009 taxes, the valuation date

is June 30, 2008. The only sales that are considered are the sales of comparable properties that occurred during the “base period” (sometimes called the “study period”), which is the 18 months prior to the valuation date. Sales that occur after the valuation date cannot be considered. If no comparable sales can be found within the 18-month base period, sales in the 6 months prior to the start of the base period can be considered, with such successive extensions able to go back as far as 6 years prior to the valuation date.

Id.

5. The discounted cash flow method of appraisal is the standard method of appraising apartment buildings in the fee appraising world. It is the usual method used by investors and lender for apartment buildings.

6. However, in Colorado, the discounted cash flow method is not allowed for *ad valorem* property tax valuations of apartment buildings, nor is the income method.

7. The most that is allowed with the income method for *ad valorem* valuation of apartment buildings is computation of a gross rent multiplier, which may be used only as a test of reasonableness, but not as a direct computation of value. For the property at issue here, the gross rent multiplier looks at the gross rents received during the base period ending on June 30, 2008 and compares that gross rent multiplier to the gross rent multiplier during the same base period for the comparable sales analyzed under the sales comparison method. The gross rent multiplier serves as a check on whether the comparable sales really are comparable.

8. But Colorado *ad valorem* property tax valuation does not allow rents to be used as part of a discounted cash flow analysis, where rents and other income for both the subject and the market would be analyzed against expenses, vacancy rates, and collection rates of both the subject and the market to arrive at annual profits; a capitalization rate would be derived from market data; and finally a value would be derived for the subject. Id. That methodology is allowed for commercial buildings, but not for apartment buildings.

9. Even if the property that is the subject of Douglas County's Proofs of Claim in this case were commercial property, rather than apartment buildings, the discounted cash flow method could not be used for Colorado *ad valorem* property tax valuation because the discounted cash flow method looks at probable future income streams that occur outside the base period. Instead, only the direct income method may be used.

10. The discounted cash flow method is a yield capitalization method that calculates the present value of anticipated future cash flow. In contrast, the direct income method looks into the past, not the future, and utilizes base period income and expense data, capitalized at base period market capitalization rates, to establish actual value.

11. The sale of the Debtors' assets across eight campuses to Redland is a multiple campus sale, which is commonly referred to in appraisals as a "bulk sale" or "portfolio sale."

12. Bulk sales almost always fetch a lower per-unit price than nonbulk sales.

13. Bulk sales are disfavored for Colorado *ad valorem* property tax valuation.

14. The BAA (Colorado Board of Assesment Appeals) is already hearing 2009 Douglas County cases.
15. In my experience, the BAA typically renders its decisions within 30 days, as it is required to by statute.
16. For property tax cases, the state district court uses an accelerated process. In my experience, this accelerated process usually results in trials and decisions that are usually nearly as rapid as the BAA.
17. Tax arbitrations typically proceed on a faster pace than the BAA.
18. The Debtors have never challenged their 2008 or 2009 Douglas County commercial personal property taxes.
19. On May 28, 2009, MSRESS III filed a protest under C.R.S. § 39-5-122(2) with the Douglas County Assessor with respect to the 2009 Douglas County real property taxes on the Improved Parcel containing the four large apartment buildings.
20. On August 21, 2009, the Assessor denied the protest.
21. On September 24, 2009, the CBOE set a hearing for October 28, 2009 for the Improved Parcel containing the four large apartment buildings. See, CBOE letter to MSRESS III, Exhibit F hereto.
22. At the CBOE hearing, MSRESS III had the right to introduce exhibits, call witnesses, including expert witnesses, and cross examine the County's witnesses.
23. On November 3, 2009, the CBOE reduced the valuation of the Improved Parcel containing the four large apartment buildings by \$4,197,750, to \$79,757,250.
24. MSRESS III's time to file a notice of appeal from the CBOE's decision expired on November 30, 2009.

