

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GARDEN COURT MUTUAL HOUSING,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq Address: 3962 South Olive Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0087 E-mail: wamclain@aol.com Attorney Reg. No.: 6941</p>	<p>Docket Number: 36644</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 12, 2001, Harry J. Fuller, Karen E. Hart and Debra A. Baumbach, presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Charles T. Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**KENSINGTON SUB B27 TO 30 DIF BOOK 2921-427 PBG MASTER
(Denver County Schedule No. 06042-39-003-000)**

Petitioner is protesting the 1999 actual value of the subject property. The subject property is described as Garden Court Mutual Housing, located at 1100-1150 Syracuse Street, Denver, Colorado. The subject was built in 1972 consisting of 15 apartment buildings, three stories in height, containing 300 units.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued by not considering the deed restrictions. The deed governs rent restrictions impacting the market value. The restricted rents impact the income stream and overall marketability

Respondent:

Respondent contends that there is no data to support a market-derived difference that can be attributed to rent restricted properties. The Respondent believes the current assigned value is well supported, documented, and supports the market.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd J. Stevens, Stevens & Associates Cost Reduction Specialists, Inc., testified with respect to the subject property. Mr. Stevens presented a Limited Consulting Assignment to support the value conclusion based on the market value.

2. Based on the market approach, Petitioner presented an indicated value of \$6,600,000.00 for the subject property.

3. Mr. Stevens presented seven comparable sales. Adjustments were made for time, location, age, size, economic characteristics, quality, and average unit size. Aggregate adjustments ranged from 3% to 34%. After adjustments, the indicated unit value ranged from \$20,838.00 to \$23,866.00. The indicated value price per square foot ranged from \$27.07 to \$40.84. The economic characteristics adjustments were based on excess vacancy and the core value per unit difference between the subsidized and non-subsidized housing income. The differences ranged from 19% to 31%. The non-subsidized housing comparable sales were adjusted downward 25%. The average unit size ranged from 523 to 863 square feet.

4. Mr. Stevens testified that the subject consists of 300 units built in 1972. There are 269,294 square feet of improvements including: swimming pool, playground, laundry room, and clubhouse that is now an office. There are 242 covered parking spaces and 30 uncovered spaces for a total of 272 spaces. HUD foreclosed on the property in February of 1990 and maintained ownership until February 1996, at which time Rocky Mountain Mutual Housing doing business as Garden Court Mutual Housing acquired the property from HUD for \$1,000,000.00. Rocky Mountain Mutual Housing Association was established in 1992 for the purpose of offering subsidized housing at below market rents. Grants were obtained from various sources for the renovation of these properties. After the acquisition, deferred items were addressed.

5. Mr. Stevens testified that the subject property is located in an area of Denver that has experienced police activity in the complex. There is gang activity, vandalism resulting in defacing and destruction of property.

6. Mr. Stevens testified with respect to the sales comparables, citing that two sales presented have subsidized housing. Comparable #4, known as Fairview, has a contract with HUD that is phasing out to end in June of 1998. Comparable #5, known as Cascade, is involved in a subsidized program; however, it is not known what specific program the complex is involved in.

7. Mr. Stevens testified he examined the comparable sales to determine gross rent multipliers (GRM's) for each of the sales. Comparable #1 derived a multiplier of 4.76, with an indicated value of \$6,493,630.00. Comparable #2 derived a multiplier of 4.58 with an indicated value of \$6,248,072.00. Comparable #3 derived a multiplier of 4.86, with an indicated value of \$6,630,050.00. Comparable #4 derived a multiplier of 4.17, with an indicated value of \$5,688,747.00. Comparable #5 derived a multiplier of 4.01, with an indicated value of \$5,743,315.00. Comparable #6 derived a multiplier of 4.21, with an indicated value of \$5,743,315.00. Comparable #7 derived a multiplier of 5.19, with an indicated value of \$7,080,239.00.

8. The witness testified that he obtained rental income from COMPS, Inc. and a variety of other sources.

9. Mr. Stevens further testified to the "Hope 2 Program Special Warranty Deed", executed on February 28, 1996. It outlines the income and rent guidelines. Rents are restricted and based on the occupant's income. The deed outlines that the covenant shall bind for a period of 20 years and rents shall be at least 25% but not more than 35% of the adjusted income levels of the occupant family. The goal is set the rents at 30% below market rent. There is a homeownership program and non-displacement clause.

10. Under cross-examination, Mr. Stevens testified to his knowledge of the "Hope 2 Program Special Warranty Deed." The program offered a \$1,000,000.00 grant to renovate the property. There is also a \$7,655,000.00 loan from the City and County of Denver at 7% for a term of 20 years. The rents are restricted by the deed. Within a 5-year period, the homeownership program stipulates that 66% of the units must be occupied by homeowners as defined under "Hope 2." None of the units have been sold at this time. However, approximately 80% of the residents are members of the homeowners' association.

11. Regarding the income levels of the residents, the income was arrived from information collected in 1999. This was out of the base period, however the information was probably the same or lower for 1998. The gross rent for the subject was estimated to be \$113,684.00 monthly and \$1,364,208.00 yearly. The income information levels were obtained from all sources.

12. Mr. Stevens testified during cross-examination with respect to the comparable sales' adjustments. Comparable sales with subsidized housing programs were searched. There was only one sale found in the Denver area: it was a high-rise and was considered to be unsuitable. All counties in the Denver metro area were searched. Comparable Sales #4 & 5 sold in the extended base period; these were adjusted for time. The sales that occurred in the base period were not adjusted for time. Age adjustments were applied at 1% per year. The adjustment for size difference was based on experience in the market. Rent data for the

comparable sales came from COMPS, Inc.; the data obtained for the subject property came from the owners. The rental data is from the year 1997; the rental data from 1998 was unavailable.

13. Mr. Stevens testified that based on the information he obtained, the subsidized units sold for less than those non-subsidized. The percentage adjustment extrapolated was approximately 25%.

14. Petitioner is requesting an a 1999 actual value of \$6,600,000.00 for the subject property.

15. Respondent's witness, Mr. Steven Gordon, City Housing Specialist with the Community Planning Development Agency, testified he is familiar with the 501(c)(3) program; it is available for nonprofit and is tax-exempt. He is the first person involved in the application process. The application is then sent on to the Denver City Counsel for approval. There are numerous documents required; trust, loan, land use restriction agreements, and construction contacts that involve financing for rehabilitating the units.

16. Mr. Gordon outlined the documents involved, citing various restrictions and compliance regulations. Quarterly reports are relied on for compliance information regarding the tenants and rents that are charged. The annual reports do not contain specific rental data. The Regulatory agreement outlines the requirements needed to satisfy the bond. The agreement permits 25% of the units to be unrestricted, and 33 1/3% of the units must be occupied by qualifying low-income tenants.

17. Respondent's witness Mr. Lawrence, M. Delsart, MAI, Certified General Appraiser, currently Senior Real Property Appraiser for the City and County of Denver Assessment Division, presented a Restricted Limited Appraisal Report.

18. Based on the market approach the Respondent presented an indicated value of \$9,882,400.00.

19. Mr. Delsart testified that the concluded indicated value of the subject is higher than the assigned value. The market approach was used to value the subject. Mr. Delsart addressed the site description, zoning and improvements for the subject property. Mr. Delsart estimated a different net square foot area than the Petitioner did. He could not obtain any rent information on the units. The units were valued on a per square foot basis; it was considered to be more exact. The comparable sales selected were similar in style, quality, location, and were competing for the same tenant base.

20. The Respondent presented four comparable sales ranging in average unit size from 523 to 877 square feet. After percentage adjustments were made for time and personal property, the time-adjusted price per unit ranged from \$22,273.00 to \$41,954.00. Percentage adjustments were made for effective age, land, unit size, and parking. The indicated value price per square foot ranged from \$44.00 to \$53.00.

21. Mr. Delsart testified that he could not find any arm's-length transactions similar to the subject with special financing. Petitioner's sales were not considered due to the excessive amount of adjustments required. Petitioner's Comparable Sale #4, known as Fairview, is a HUD Section 8 subsidy, where the tenant receives payment vouchers that are applied towards the rent. The actual rents realized may be market rents. The HUD program was in the process of being phased out soon and was not sold as rent restricted or subsidized. Petitioner's Sale #5, known as Cascade, was located too far away, and there was no reliable information regarding what subsidized program this sale might be involved in.

22. Mr. Delsart testified that there was not enough data to support an adjustment for rent subsidy. He expanded his search into other counties and contacted the Colorado Housing and Finance Authority (CHFA) for possible non-arm's-length sales; none were found to support a conclusion. There was no trend that could be identified. Different programs would have different impacts on the market, and many subsidy programs could be receiving market rents. Subsidized housing projects have a stable tenant base. Rent restricted properties have limits; rents that are below the market may have an adverse effect.

23. Mr. Delsart testified that he disagreed with the rent comparable analysis presented by the Petitioner. The analysis does not indicate any adjustments for unit size difference, location or condition. The rent roll for the subject was requested several times; however, it was never provided. The rent roll was necessary to determine if the subject's rents were low. There are several different size units and the rental rate is based on what size the unit is.

24. Mr. Delsart testified with regard to the Petitioner's comparable sales adjustments. He felt that time adjustments should have been made on all the sales. Comparable Sales #2, #5 & #6 are located at a distance with a different tenant base. Comparable Sale #1 was not considered to be a suitable sale; this was a distressed property with a high degree of deferred maintenance. Comparable Sale #4's subsidy program was expiring. Comparable Sale #5 required a larger size adjustment: the unit size is approximately 36% smaller than the subject.

25. Mr. Delsart testified that he felt the actual rents need to be examined to determine any type of market recognizable difference in rents for the area. He indicated that a comparison of non-restricted rents in the complex compared with restricted rents in the complex would establish if the income received is at market rents.

26. In response to the GRM, Mr. Delsart testified that you must be careful because of the different expense ratios than can distort the data. The gross rent multiplier (GRM) was not considered in determining the value for the subject property.

27. Under cross-examination, Mr. Delsart testified that it is conducive for potential investors to examine data on a square foot basis. He excludes any common areas and hallways from his unit square footage calculation.

28. Under further cross-examination, Mr. Delsart testified that none of the comparable sales he used are involved in any subsidy or rent restricted programs. The time adjustments were derived from a study for the time period. The other adjustments for age, land, parking, and size were subjective and based on his overall experience in the market.

29. Based on the market approach, Respondent's witness assigned an actual of \$9,455,700.00 to the subject property for tax year 1999.

30. During rebuttal testimony, Mr. Stevens testified to the actual rents received for the subject. The units ranged in size from 564 to 1346 square feet. The monthly rents ranged from \$245.00 to \$325.00 for a one bedroom, one bath unit. The units with two bedrooms and one bath ranged from \$392.00 to \$422.00. The units with three bedrooms and two baths ranged from \$535.00 to \$600.00. The entire complex was rented at these rates.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 1999.

2. The subject property is residential in nature. Accordingly, the market approach is the exclusive method for valuing it for tax assessment purposes. Colo. Const. Art. X, § 20(8) (c).

3. House Bill 00-1268 became law and was effective beginning in 2000, while the above-captioned matter was pending. House Bill 00-1268, 2000 Colo.Sess.Laws 1499, § 8, at p. 1503.

4. House Bill 00-1268 provides in relevant part that "A GROSS RENT MULTIPLIER MAY BE CONSIDERED AS A UNIT OF COMPARISON WITHIN THE MARKET APPROACH TO APPRAISAL." House Bill 001268, 2000 Colo.Sess.Laws 1499, § 2, at p 1500 (modifying subsection 39-1-103 (5)(a)), upper case in original.

5. Petitioner argues that the above-quoted provision of House Bill 00-1268 is procedural in nature and should be applied to this matter.

6. Respondent argues that House Bill 00-1268 only applies prospectively and not to the subject property.

7. Whether the gross rent multiplier may be applied while valuing property under the market approach is a question that may be easily answered. Yes, it may, if the legislature says so. American Mobile Home Ass'n v. Dolan, 191 Colo.433,437-553 P.2d 758,762 (1976) (legislature may establish classes of property and provide suitable and different methods for ascertaining value for taxation for different classes); Ames v. People ex rel. Temple, 26 Colo. 83, 102, 56 P. 656,662-663 (1899) (same).

8. If that is the case, the question remains whether House Bill 00-1268 may be applied to the subject property. For the reasons that follow, the Board concludes that House Bill 00-1268 does apply in this matter and the gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal.

9. The amount of weight to be given the gross rent multiplier is for the Board to determine in the exercise of its sole discretion. Board of Assessment Appeals v. Colorado Arlberg Club, 762 P.2d 146,151 (Colo. 1988). The vintage of the data is an appropriate consideration while determining the appropriate weight the data should receive.

10. The rules applicable to newly enacted statutes are clear. Although a statute is presumed to have prospective effect, § 2-4-202, C. R. S. (2000), the presumption does not apply to procedural or remedial statutes. The latter statutes may apply to existing disputes. Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982); also Raisch v. Industrial Commission, 690 P. 2d 1290 (Colo. App. 1984) (reviewing body should apply procedural statute in effect at time its order is entered). A statute affecting substantive rights applies prospectively while a statute addressing procedural matters may apply retrospectively. Rosa v. Industrial Claim Appeals Office, 885 P.2d 331 (Colo. App. 1994).

11. Specifically, the Colorado Supreme Court has held that because the Board conducts de novo proceedings, the Board should apply procedural statutes to pending cases. City and County of Denver v. Board of Assessment Appeals, 947 P,2d 1373, 1380 (Colo.1997).

12. In addition, the mere fact that some operative facts occurred prior to enactment of an applicable statute does not mandate that the earlier version of the statute controls. See Lexton-Ancira Real Estate Fund v. Heller, 826 P. 2d 819 (Colo.1992) (treble damages under the later version awarded although events occurred and action accrued prior to 1987 amendments). CF. Collins v. Industrial Claim Appeals Office, 813 P.2d 804 (Colo.App.1991). Application of a statute is not erroneous merely because the facts upon which it operates occurred before adoption of the statute); In re Marriage of Wilson, 765 P.2d 1085 (Colo.App.1988) (long-arm statute may be applied retroactively in cases in which claim arose prior to effective date of statute if complaint was filed and service of process was accomplished after statute was enacted).

13. The Board finds that consideration of a gross rent multiplier within the market approach to appraisal within the meaning of House Bill 00-1268 is procedural, not substantive, in nature. The substantive right is to the application of the market approach. Consideration of a gross rent multiplier is part of the legislative method for exercising the substantive right. Accordingly, House Bill 00-1268 may be fairly applied to the subject property.

14. The House Bill 00-1268 amendments to subparagraph 39-1-103(5)(a) are applicable here. A gross rent multiplier may be considered.

15. However, in this case, the Petitioner did not present a breakdown of the income, adjustments, and expense ratios for the sales to support a GRM conclusion. The Board believes that different rent restricted and subsidized programs have different affects on the GRM's. The Board also agrees with Respondent that varying expense ratios can distort the data.

16. Additionally, Petitioner raised the issue of the adverse affect in the market value due to restricted rents. Testimony and evidence presented by both Petitioner and Respondent indicated there were no sales of similarly rent restricted properties. The Board agrees that this lack of similar sales could indicate that there is an adverse affect on the subject property value. However, there was no preponderance of evidence or testimony to support a conclusion as to what the actual affect on the property value would be.

17. The Board agrees with the Respondent that the rent information presented by the Petitioner for subsidized and non-subsidized housing was not supported. We agree that various adjustments should be made regarding size, location, and condition to determine what the adjustment factor might be. The Petitioner did not make any adjustments for any of these factors.

18. The Board is also concerned regarding the accuracy of Petitioner's offered actual rent information. In earlier testimony, Petitioner presented monthly and yearly rent figures that differed from the figures testified to in rebuttal. The testified rents also conflicted with rent schedules in the written documentation. In addition, Petitioner testified that the entire complex was rented at 30% below market rents; however, the rent guidelines outline that rents can be set at no less than 25% nor more than 35% of the adjusted income levels of the occupant family. Twenty five percent of the units are not rent restricted under the housing agreement, yet the rents were restricted at the owner's discretion for those units. The use of actual rents therefore would not equate to potential rent income, which is what is needed to measure the market rent difference as applied to non-restricted complexes, if such difference is determined to have an affect on the market.

19. Finally, the Board finds that the most credible testimony and evidence relating to the comparable sales and corresponding adjustments was presented by the Respondent.

20. The Board has carefully considered all admitted evidence and testimony. The Board determined that the Respondent's assigned value is supported and is hereby affirmed.

ORDER:

The petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 17th day of April, 2001.

BOARD OF ASSESSMENT APPEALS

Harry J. Fuller
Harry J. Fuller

Karen E. Hart
Karen E. Hart

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

APR 17 2001

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

Diane Von Dollen
Diane Von Dollen



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