

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THOMPSON MICHIE ASSOCIATES/FAIRWAY APARTMENTS, LLC,</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: Mark W. Gerganoff, Esq. Frank & Finger, P.C.</p> <p>Address: P.O. Box 1477 Evergreen, Colorado 80439</p> <p>Phone Number: (303) 674-6955</p> <p>Attorney Reg. No.: 13240</p>	<p>Docket Number: 39961</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 3, 2003, Debra Baumbach and Judee Nuechter presiding. Petitioner was represented by Mark Gerganoff, Esq. Respondent was represented by Charles T. Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**10700 East Dartmouth, Denver, Colorado
(Denver County Schedule Nos. 06355-00-005-000, 06355-00-008-000,
06355-00-018-000, 06355-00-019-000)**

Petitioner is protesting the 2001 actual value of the subject property, a multi-building apartment complex located at 10700 E. Dartmouth, Denver, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property, known as the Kennedy Ridge Apartments, has some deferred maintenance and should be valued at approximately \$40,000,000.00.

Respondent:

Respondent contends that the value assigned by the Assessor's Office was approximately \$50,000,000.00. The appraisal prepared by that office supports the assigned value.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, Registered Appraiser, presented the following indicator of value:

Market: \$40,278,000.00

2. Petitioner's witness presented six comparable sales ranging in sales price from \$4,350,000.00 to \$32,400,000.00, and in size from 89,694 to 703,838 square feet. After adjustments were made, the sales ranged from \$47.77 to \$56.79 per square foot.

3. Petitioner's witness testified that the subject property is a large 3-story garden style apartment complex containing 959 units in 37 buildings. The year of construction for 230 of the units was 1974, 270 units were constructed in 1977, and 459 units were constructed in 1979. For the purpose of his appraisal report, Petitioner utilized 1977 as the effective year of construction. The subject site is a 29.51 acre parcel with frontage to Dartmouth Avenue, and is zoned R-3 which allows Multi-Unit Development. The property has typical amenities such as laundry, playgrounds, patios, volleyball courts and two pools at the complex. He personally inspected the property.

4. Mr. Stevens testified that he determined the value of the subject property based on a gross rent multiplier, the market approach, and deducting the personal property.

5. The witness testified that the subject property was painted and re-roofed after the assessment date (as indicated in the photos included in the appraisal report). The property was not

updated as of the assessment date. An underground passageway connects the units in each building, which is not considered typical for this style of building. At the time of inspection in August 2003, there was some deferred maintenance, but the overall conditions Mr. Stevens observed were average.

6. Mr. Stevens testified that there were two non-calculating errors in his appraisal report. Comparable sale 1 had an average unit size of 818 square feet rather than 843 square feet and comparable sale 3 had an average unit size of 741 square feet rather than 723 square feet. All of the comparable sales are within a close radius to the subject, but were considered to have inferior locations since the subject property backs to Kennedy Golf Course. Most of the comparables are considerably smaller than the subject property. Sales 4 and 5 are from an extended base period with sale 5 indicated by Mr. Stevens as being most similar to the subject. Sale 6 is the subject property and it also sold within the extended base period. No adjustments for condition were applied to this sale since extensive changes were made after the base period. The subject property does not have secured access. Based on the market approach, Mr. Stevens derived a value of \$42,000.00 per unit or \$40,278,000.00 for the subject property.

7. The Petitioner's witness testified that he determined the monthly gross potential rent, based on the different sizes of units within the complex, to be \$607,307.00. This would indicate an annual gross potential rent of \$7,287,688.00. The indicated gross rent multiplier for the subject was 6.39, with an indicated value of \$46,568,326.83. Mr. Stevens then deducted \$379,131.00 for personal property that was taxed under a separate Personal Property Tax Schedule. A vacancy rate of 8 to 12 percent was indicated as normal for this complex per the owner.

8. Mr. Stevens testified that paired sales were studied to determine a time adjustment within the submarket for the subject. Petitioner concluded to a time adjustment of one-half percent per month.

9. Petitioner's witness presented a final correlation by the market approach to derive a value of \$40,000,000.00 for the subject property.

10. During cross-examination, the Petitioner testified that Petitioner's comparable sale 1 was the same as Respondent's comparable sale 1. The adjustments were based on a net unit size for Sales 1 and 3 as compared to the subject's net unit size of 734 square feet.

11. Mr. Steven's testified under cross-examination that there was deferred maintenance as of the assessment date, but that the entire complex was painted and re-roofed between 2001 and 2003. He did not factor these into his analysis for the base period.

12. Under cross-examination, Mr. Stevens testified that he applied a location adjustment to all of the sales since the subject's location adjacent to Kennedy Golf Course is superior to the comparables. The location adjustment should have been a positive adjustment instead of a negative adjustment. The age adjustment Mr. Stevens applied to the comparable sales was 1 percent per year.

Sale 4 should be a 6 percent adjustment, not an 8 percent adjustment. The time adjustment was determined by sales, the condition of the sales during the base period, and a paired sales analysis. He looked at 90 garden style apartment complexes in the metro area that had sold within the base period to determine his time adjustment.

13. Under redirect, Mr. Stevens testified that changing the location adjustment from a negative adjustment to a positive adjustment would change the value of the subject property by approximately 5 percent to \$44,000.00 per unit.

14. During re-cross, Mr. Stevens was asked if the adjustment should be a 10 percent adjustment instead of a 5 percent adjustment. Mr. Stevens indicated he believed a value of \$44,000.00 per unit was appropriate for the subject property.

15. Respondent's witness, Mr. Lawrence M. Delsart, a Certified General Appraiser with the Denver County Assessor's Office, presented the following indicator of value:

Market: \$54,455,700.00

16. Respondent's witness presented four comparable sales ranging in sales price from \$7,100,000.00 to \$24,000,000.00 and in average unit size from 707 to 1,030 square feet. After adjustments were made, the sales ranged from \$79.00 to \$87.00 per square foot.

17. Mr. Delsart testified that he personally inspected the subject several times, most recently on August 15, 2003. The value assigned to the subject property was \$49,993,700.00, which included four parcels.

18. The Respondent's witness testified that he concluded to a market value of \$54,455,700.00 as of June 30, 2000, based on his appraisal. Mr. Delsart indicated that comparable sale 4 within his report may not have been an arm's length transaction and he did not consider this sale as influential. It did not affect his opinion of value since he utilized the lower range of values. Sale 2 was not a row walk-up design, but was a hall walk-up design. He did not make any adjustment for this design difference.

19. The witness testified that the subject property was valued as of June 30, 2000. The site consists of four parcels on 29.508 acres. The net rentable area is 664,094 square feet. There are 285 carports and 1,154 open surface spaces for parking. There is a clubhouse, two pools, three tennis courts and other amenities.

20. Mr. Delsart testified that the comparable sales were selected during the base period of January 1, 1999 to June 30, 2000. He looked for similar scale of at least 100 units, similar garden style or low-rise design, similar year of construction, and similar locations within the southeast corridor area. He deducted \$300.00 per unit for personal property. A .9 percent time adjustment per month was derived from statistical analysis of all of the sales within Denver County and the surrounding area. Mr. Delsart used approximately 75 to 100 sales from Planned Building Groups, which would be similar to the subject property. Additional adjustments were applied for unusual items such as 15 percent for proximity of the subject property to the golf course. This is not the

same as a location adjustment from one neighborhood to another neighborhood. The presence of a golf course is different from a neighborhood location in another part of the city.

21. The Respondent's witness testified that he applied a one-half percent per year for an effective age adjustment to the comparable sales. A design adjustment was based on the difference of a walk-up design to elevators. A two percent adjustment for skylights and fireplaces were applied to sales 2 and 3. The Respondent used an average unit size of 700 square feet for the subject property. Sale 2 had an inferior location in Thornton as compared to subject's location. The Respondent concluded to a value of \$82.00 per square foot or \$56,784.00 per unit for the subject property. The total value indicated for the four parcels was \$54,455,700.00.

22. The witness testified that Sale 2 may not be an arm's length transaction and that large investment properties are often not listed with realtors, but are typically handled between principals through networking in the investment community. He does not believe that this sale was an actual arm's length transaction since it was not a listed property when sold. An assessor looks at the deeds, the transfer declaration statement, confirmation letters and published data in Co-Star Comps in determining sales.

23. Mr. Delsart testified that he examined Petitioner's Exhibit A and concluded that most of the sales Petitioner used have inadequate time adjustments. The sales prices need to be adjusted to current time basis based on studies over time. The Assessor's Office indicated that a .9 percent time adjustment is appropriate for multi-building properties. Petitioner's sale 2 is a low quality property in regard to construction, appeal, and soil settlement problems. Sale 6 is the subject property. He adjusted sale 6 in the Petitioner's report by applying a .9 percent time adjustment, deducting \$300.00 per unit for personal property, and adding repairs and upgrades, which indicated an adjusted value of \$49,455,793.00. Since this sale occurred in the pre-base period, two different time adjustments were used to represent two base periods in determining the value as stated above.

24. During cross-examination, the witness testified that the Assessor's assigned valuation was based on the mass appraisal process. Respondent did not know the subject's vacancy rate. The vacancy rate could influence the adjustment for covered parking if the vacancy rate was different between the subject and the comparables. He assumed that vacancy rates were similar. The indicated year of construction for parts of the complex constructed after 1979, such as the clubhouse and maintenance buildings, were based on county records. Photos shown in the Respondent's appraisal report were of the model units, which were indicated as typical by the property manager in August 2003.

25. The Respondent's witness testified that he used a gross rent multiplier as a check for reasonableness to determine the value of the subject property, but that he did not value the property using that method. He made no adjustments for condition of the comparables since he physically inspected all three sales. All of the sales had some deferred maintenance and sale 2 had extensive roof problems at the time of sale. Sale 3 also had a roof condition and various deferred maintenance with an estimated \$1,500,000.00 cost to cure. Functional differences, such as sales 1 and 3 having larger average unit sizes than the subject, were adjusted on a square foot basis and not a unit adjustment. Based on Mr. Delsart's 20 years of experience, he indicated that smaller units are worth more per square foot than larger units of similar quality.

26. During redirect, Respondent's witness told the Board that if he had used the lowest indicated price per square foot as shown in his appraisal report of \$78.00 per square foot, his opinion of market value would be \$51,799,332.00, which is more than the assigned value.

27. Mr. Delsart testified that he applied a 15 percent adjustment to the comparable sales for the subject's location adjacent to the golf course. Sale 3 may be located across from open space or a park and that may affect the 15 percent adjustment for that sale.

28. The Respondent presented another witness, Mr. Mike Van Donselaar, supervisor in the Denver Assessor's Office. Mr. Van Donselaar oversees the valuation of multi-family properties in Denver County.

29. The witness testified that the time adjustments utilized by the Respondent were based on a time trend analysis by the Assessor's Office and the Division of Property Taxation using weighted sales ratios to current values. They also try to look at paired sales within a short period of time and then rely primarily on a regression model for apartments to determine time adjustments.

30. During rebuttal testimony, Mr. Stevens indicated that the subject property has frame and pressed board construction, whereas sale 2 was brick construction and considered to be superior to the subject. All of Petitioner's sales were listed at the time of their sale. He indicated that Respondent's sale 3 was located in Lakewood on a hill next to a park with city views and a higher rental rate than the subject property based on location. Mr. Stevens believes that Respondent double-dipped by applying a location adjustment to the comparable sales, as well as a positive adjustment for the golf course.

31. Respondent assigned an actual value of \$49,993,700.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. The Board has carefully considered all admitted evidence and testimony by both the Petitioner and the Respondent.

3. The Board agrees with the Petitioner that the Respondent appears to have applied a double location adjustment to the comparable sales as presented in Respondent's appraisal report. The Board was not convinced that both of those adjustments were supportable.

4. The Board accepted the Respondent's time adjustment of .9 percent per month since this is based on reliable data compiled by the Denver County Assessor's Office and follows guidelines established by the Division of Property Taxation.

5. The Board recognizes that the Petitioner made an error in the application of the location adjustment to his comparable sales. The 5 percent negative adjustment should have been a 5 percent positive adjustment. The Board has made corrections to Petitioner's report with regard to the average gross living area of two of the comparable sales, and applied the correct location adjustment to sales 1 thru 5. The Respondent's time adjustment of .9 percent per month was also applied to the comparable sales. After the Board made these adjustments, the price per unit of the comparable sales ranged from \$44,755.00 to \$54,434.00. The price per square foot ranged \$58.12 to \$66.55. The Board concluded to a value of \$48,000.00 per unit or \$65.40 per square foot for the subject property.

6. The Board concluded that the 2001 actual value of the subject property should be reduced to \$46,000,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$46,000,000.00.

The Denver County Assessor is directed to change his records accordingly.

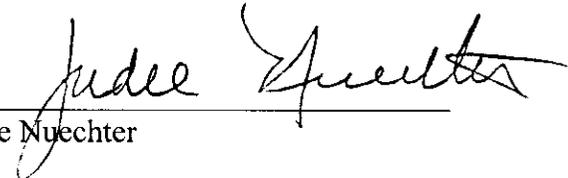
APPEAL:

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 4th day of November, 2003.

BOARD OF ASSESSMENT APPEALS



Judee Nuechter

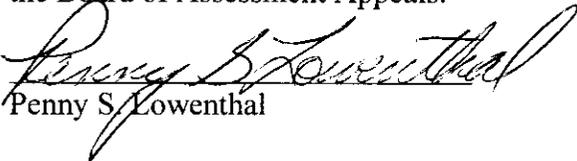


Debra A. Baumbach

This decision was put on the record

NOV 03 2003

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



Penny S. Lowenthal

