

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>CONTINENTAL HOUSING PARTNERS,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Mark S. Berry, Esq. Address: 1 Wren Littleton, Colorado 80207 Phone Number: (303) 932-2909 E-mail: berrymp1@aol.com Attorney Reg. No.: 25023</p>	<p><b>Docket Numbers:</b> <b>40033-40038</b> <b>40039-40042</b> <b>40043-40050</b> <b>40051-40057</b> <b>40058-40066</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 12, 2003, Rebecca A. Hawkins and Karen E. Hart presiding; and on May 13, 2003, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by Mark S. Berry, Esq. Respondent was represented by Charles T. Solomon, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

<b><u>Ash Apartments</u></b>	<b>Docket Nos. 40033 – 40038</b>
<b>Denver County Schedule Nos.</b>	<b>05101-09-028-000, 05103-21-001-000,</b>
	<b>05103-23-005-000, 05103-25-034-000,</b>
	<b>05104-24-007-000, 05151-14-001-000</b>

**Holly Apartments**

**Docket Nos. 40039 – 40042**

**Denver County Schedule Nos. 02349-21-038-000, 02353-10-009-000,  
02354-19-002-000, 02354-19-003-000**

**Maple Apartments**

**Docket Nos. 40043 – 40050**

**Denver County Schedule Nos. 02252-40-015-000, 02262-12-001-000,  
02262-45-009-000, 02262-46-028-000,  
02265-34-001-000, 02265-34-011-000,  
02351-21-014-000, 02352-07-015-000**

**Pine Apartments**

**Docket Nos. 40051 – 40057**

**Denver County Schedule Nos. 02352-12-006-000, 02352-12-007-000,  
02352-19-013-000, 02352-26-020-000,  
02353-01-015-000, 02353-04-015-000  
02353-10-010-000**

**Willow Apartments**

**Docket Nos. 40058 – 40066**

**Denver County Schedule Nos. 02252-40-024-000, 02261-13-022-000,  
02262-02-011-000, 02262-07-016-000,  
02262-30-012-000, 02262-47-011-000,  
02265-11-012-000, 02265-12-023-000,  
02265-22-011-000**

Petitioner is protesting the 2001 actual value of the subject properties: five HUD apartment projects totaling 34 non-contiguous parcels co-mingled throughout the City of Denver. The projects have been named after different types of trees: Ash, Holly, Pine, Maple and Willow; and are thus referred to as “The Trees.” Collectively, the subject properties total 346 apartment units.

**ISSUES:**

**Petitioner:**

Petitioner contends that the subject properties are rent-restricted and are overvalued by Respondent. There are no similar HUD sales to use in the market approach. The subject properties should be adjusted due to their sub-market rents. The five subject projects should be valued as group projects, not individual parcels.

**Respondent:**

Respondent contends that the subject properties are 34 non-contiguous parcels and have been valued separately as required. Actual value is not the same thing as fair market value. Residential property can only be valued on the market approach; you cannot use the

income approach. The subject properties are rent subsidized, not rent-restricted, and therefore they should not be adjusted per the Assessor's Reference Library (ARL) regulations.

## **FINDINGS OF FACT:**

1. This hearing is a consolidation of 34 dockets: 40033-40038, 40039-40042, 40043-40050, 40051-40057 and 40058-40066. Testimony was heard concerning the Willows Apartment Complex, the comparable properties in relationship to the Willows, and the Willows' restricting contracts. Both parties agreed that the issues are the same and apply to the remaining complexes: the Ash Apartments, the Holly Apartments, the Maple Apartments, and the Pine Apartments. The appeal for abatement pertaining to an additional building located within the Maple Apartments complex is separately considered under Docket No. 40135.

2. Petitioner's witness, Mr. Donald Damron, MAI, CCIM Appraiser, testified that he is familiar with the Willow Apartments and has inspected the area. He understands that the valuation approach for the subject is restricted to the market approach, but that highest and best use and encumbrances should be considered as well. In the absence of other properties that are not legally restricted, one must somehow recognize the legal encumbrances. A Gross Rent Multiplier (GRM) can be used.

3. Mr. Damron testified that the physical location of properties must be examined to make sure that the sales are truly comparable. In the Willows' neighborhood, value can drop significantly within just a couple of blocks. The physical condition of the properties is a heavy consideration. Maintenance is a high priority at the subject properties, but there is not enough cash to maintain them as well as some of the comparables are maintained. The rate of government subsidy has declined over the years for affordable housing. Though state statutes prohibit the income approach, there is flexibility in considering factors affecting value. Taxes and security costs have an effect on operating income, which can affect value.

4. Mr. Damron testified that the subject properties are receiving fair market rents. Economically adjusted rents should be used if the market rents of the comparables are higher than the subjects'. The GRM can be used and is a part of the market approach. If the GRMs used are from conventional apartment complex sales, they are not indicative of the subject properties.

5. Under cross-examination, Mr. Damron testified that he reviewed the Assessor's Reference Library (ARL) procedures regarding subsidized properties and rent-restricted properties. An economically derived market adjustment (EDMA) is an appropriate technique that involves analyzing gross rent multipliers. He believes this procedure can be used for subsidized properties. He recognizes that the ARL says market adjustment procedures for restricted rents are not applicable for Section 8 properties. However, any adjustment that is necessary due to location or physical condition of the property should be considered for Section 8 properties. Rent-restricted and subsidized housing properties should be considered separately for analysis.

6. Mr. Damron testified on redirect that there is probably a differential between HUD

rents and actual rents. The underlying assumption is that you are achieving HUD rents. The subject was underperforming HUD rents. He believes Assessors have the discretion to use GRMs as a check of the EDMA calculation.

7. Petitioner's witness, Mr. Johnny Stewart, Asset Manager with Marcrum Management Company, testified that he manages the five subject properties known as "The Trees." He took pictures of each of the subject properties and of as many of the Respondent's comparables that he could find. Most of the subject buildings are 90 years old. They were constructed from non-modernized brick; a soft brick which caused a settling of the subjects' foundation. He rated each of the Willows buildings and Respondent's comparables as to location and construction. He could not find 1209-1221 34<sup>th</sup> Street, the building is not there; it is a shopping complex, alley, and one-story house. The photo of 37 Humboldt was used several times under different addresses. The picture in Respondent's appraisal of 2155 Race is not that property – he could not locate it; he thinks they used 2125 Race.

8. The subject property located at 3318 Clayton has had some settling due to the soft brick construction. Respondent has compared this building with buildings at 1900 East 17<sup>th</sup> Street, 1528 Emerson, and 1320 Garfield. Garfield, Emerson and 17<sup>th</sup> Street are some of the nicest locations in Denver. The Garfield property is 20 years old, whereas the subject is 90 years old. The property on Emerson is constructed of better brick and the 17<sup>th</sup> Street property has been stuccoed.

9. Respondent compared the subject property at 1900 35<sup>th</sup> Street with 2155 Race, which is a fairly new building about two blocks from hospitals. Respondent's comparable property at 2021 20<sup>th</sup> Street is located right next to the hospitals and is constructed of a more modern brick. Mr. Stewart agrees that 3700 Humboldt is comparable to the subject.

10. Respondent compared the subject property at 3706 Williams with the same comparable sales used for 3318 Clayton. He believes 3700 Humboldt is the only similar comparable. The other two comparables are located in better neighborhoods and have better construction, i.e. pitch roofs compared to the subject properties' flat roofs.

11. The subject property at 1429 30<sup>th</sup> Street is not the best location. There is a shotgun blast and two bullet holes in the subject property's exterior wall. It was compared to 2155 Race and 2021 20<sup>th</sup> Street, which Mr. Stewart believes are not comparable. Only the sale at 3700 Humboldt is comparable to the subject.

12. The subject property at 1701 East 34<sup>th</sup> Avenue looks better in the photo as it has some cosmetic design, but it is still constructed with the same type of soft brick. Respondent used the same comparable sales as were used for the 1429 30<sup>th</sup> Street property. Again, only 3700 Humboldt is comparable.

13. The subject property located at 3705 Lafayette, in north Denver, has been cosmetically changed with stucco, but the construction is still old sand brick. Mr. Stewart pointed out that there was a tree growing out of the brick. The comparable property located at 1212 Corona is a gorgeous building in a prime location. The comparable at 1934 Grant is a nice location off of 17<sup>th</sup> Avenue, is two blocks from downtown, is in good condition and has been re-bricked in the last

30 years. The property at 723 26<sup>th</sup> Street is a commercial building surrounded by retail stores. He does not think that there are any apartments in the building.

14. The subject property located at 1423 East 29<sup>th</sup> Street is the most unfavorable of the buildings, due to its location and the way the units are cut-up. They cannot keep good residents in this complex. Respondent compared this subject property with 1528 Emerson, 1320 Garfield and 1900 17th Street. There are extreme location differences, varying neighborhood characteristics and the buildings are of very different construction.

15. The subject property located at 3202 Williams is one of the best Willow buildings. It is located in a better neighborhood. The Respondent's comparables are 2155 Race, 2021 20<sup>th</sup> Street and 3700 Humboldt. The subject is closer to Race and 20<sup>th</sup> Street, but still different in comparability.

16. Respondent compared the subject property located at 1532 31<sup>st</sup> Street to 2155 Race, 2021 20<sup>th</sup> Street and 3700 Humboldt. Mr. Stewart believes that the Humboldt property is comparable, but the Race and 20<sup>th</sup> Street properties are not comparable.

17. Mr. Stewart testified that the only sale used by Respondent that is truly comparable to the subject buildings is 3700 Humboldt. To his knowledge, none of the comparables are HUD properties. The property located at 3700 Humboldt is currently selling as condominiums. Until a year ago, the building at 2155 Race was subsidized housing, but it is now empty, as is 723 East 26<sup>th</sup> Street.

18. Under cross-examination, Mr. Stewart testified that his duties include maintaining the subject properties. In his comparisons, he was looking at location and the construction of the comparable buildings. He looked at their foundation, the make of brick and the brick condition, roofing, and windows. He did an exterior inspection only. Regarding location, Mr. Stewart was looking at resident composition, crime rate (which is higher in Five Points), and available activities, i.e. everyone wants to live around 17<sup>th</sup> Avenue as it is a good location near downtown. He believes 2155 Race was occupied on June 30, 2000; but he does not know about 723 East 26<sup>th</sup> Street. He did not see an affordable housing sign on any of the comparable properties – he guesses that they were not affordable housing on the level of value date. Although Mr. Stewart only reviewed one of Respondent's appraisals, he does not think Respondent made adjustments for condition, location, etc.

19. Upon questioning by the Board, Mr. Stewart testified that he does not think the Humboldt property was a condominium complex on June 30, 2000; it was rehabilitated within the last 12 months.

20. Petitioner's witness, Mr. Gary Marcrum, President of Marcrum Management Company, testified that he is a partner in the ownership of the subject properties. He currently owns about 31 properties and manages 56 properties; 10 properties are conventional apartment complexes and 46 are HUD properties.

21. Mr. Marcrum testified that there are many restrictions on HUD subsidized properties.

HUD establishes the rent rate, determines who you can rent to, requires you to maintain files on tenants to show they were properly qualified, inspects the physical condition of the property, and requires annual audits. The Housing Assistance Payment contract requires that 25% of a resident's income must be used for utilities and rent.

22. There were various loans on the different complexes. Due to flexible subsidy loans, there are also rent and use restrictions on the subject. The prior owners had borrowed money from HUD at a 1% interest rate, which came with many restrictions, including that the subject properties must be operated as subsidized housing until 2016 or 2017. The restrictions run with the land.

23. Mr. Marcrum testified that the subjects are rent-restricted. There are three kinds of fair market rents. The fair market rents published by HUD are for top-of-the-line complexes. Every five years, Petitioner must get an appraiser to establish comparable market rents, and consider operating costs, physical condition, and age -- all things that would cause a person to rent at the subject instead of another complex.

24. Operating Cost Adjustment Factors (OCAF), published by HUD, are based on an annual inflation factor and determine the maximum rent that can be charged. Mr. Marcrum presented an example of increased operating expenses that do not get reimbursed: the Petitioner's insurance has increased over 100% in the last two years, but they cannot get any increase to the OCAF except at the 5-year market rent comparability study. If your rents are not equal to the comparables in the study, then your rents can only be increased annually in October. If there are unusual expenses, you can submit them in June or July prior to the October review for consideration. The subjects' monthly rents usually run \$100.00 to \$200.00 per unit below HUD fair market rents. The subjects' rents are budget-driven up to the HUD market rent study. If you have a complex where the rents are higher than the HUD comparable study, then HUD requires the property owner to reduce the rent they can charge. Mr. Marcrum tried to get a market rent increase approval from HUD, but HUD said Continental Housing Partners did not qualify because the terms of the flexible subsidy loan do not allow distribution or accumulation of profits to the owners. Continental Housing Partners make nothing on these projects.

25. Mr. Marcrum testified expenses are 10% to 80% higher for HUD properties than for conventional apartment complexes. HUD properties have higher insurance and security costs. They cannot refuse prospective tenants unless they have terrible credit or a criminal record; they take people that a conventional apartment complex probably would not take.

26. Mr. Marcrum testified that they cannot sell the subject properties. Under the original HUD rules, they could have opted out of the contracts after 20 years. Petitioner's appraisals are on the entire scattered site property, not individual buildings. The last offer they got was \$7 million on all of "The Trees." If there is any profit from the subject property, it must be sent back to HUD to be applied to the market subsidy contracts.

27. Mr. Marcrum testified that Petitioner's Exhibit A, page 83, shows the June 1, 2000 rent. Their rents also include all utilities; a conventional apartment complex would not include all utilities. The rents to which HUD agrees are shown on page 90. Page 94 is the Housing Assistance Payment (HAP) contract. Section 13 regulates the selection and admission of applicants. Section 14

is maintenance and inspections that are conducted by HUD. Section 15 is about tenant contribution, utility payments, etc. Petitioner's Exhibit G is HUD fair market rents, as referred to in page 7.30 of Respondent's Exhibit 1D. Petitioner's Exhibit A, page 102, is the financial assistance contract to rehab the subject. It is a matching funds loan. The agreement on page 112 says they may not distribute profits while the note is outstanding. The use restriction runs with the land – it must continue to operate until 2016 as low-income housing. Pages 123 through 130 show the Regulatory Agreement, which also restricts rents. Section 236 rents can be increased annually if the expenses are proved to have increased. Distributions are limited to 6%, but cannot be distributed due to the loan restrictions.

28. Mr. Marcrum believes he could get \$7 million for the subject properties due to the projects qualifying for tax credits. The properties can be sold as a project but not by individual building. The profitability of the complex goes to the market value of the subject.

29. Under cross-examination, Mr. Marcrum testified that there are restrictions on the amount of profits that can be made and there are many regulations. The benefits are you can keep a higher occupancy rate. During the base-year, the vacancy was probably 3-5%. They usually have lower vacancy than conventional apartment complexes. There is a market group that targets Section 8 projects. Continental Housing Partners is a for-profit, limited partnership that owns 10% of "The Trees."

30. Mr. Marcrum testified that HUD annually publishes market rental rates by region. "The Trees" do not receive the rates published by HUD. Every Section 8 project must have the 5-year rent comparability studies. The HUD published rents set the ceiling for the rents allowed. Comparability studies are done project-to-project, not region-wide. The comparability studies are of properties located within a mile of the subject properties. The study is done by Petitioner's appraiser and approved by HUD. Regarding the Petitioner's Exhibit A, page 83, contract rents, a person cannot pay any less than the basic rent, but their income can cause them to pay up to the market rent, which is the maximum that can be charged. However, Petitioner can only keep the contract rent; HUD gets the rent difference.

31. Petitioner's witness, Mr. Cary Bruteig, MAI, Certified General Appraiser with Apartment Appraisers and Consultants, testified that he has viewed the exterior of the Willows and the comparable properties. He did not perform an appraisal of the subject; he is acting as a consultant. He has reviewed the Respondent's appraisals of the Willows. He would have had a significantly lower value than Respondent due to location and the impact of Section 8. He agrees that sales in Capital Hill and downtown Denver are superior. The Willows are located in a poor neighborhood. He does not believe Respondent's size adjustments are appropriate; they are too small. Respondent's time adjustment was another concern. Respondent used 14% per year, he uses 6% a year; he used paired sales to determine the annual appreciation. Also, an additional adjustment needs to be made for being a Section 8 property. The EDMA assessor tool is a kind of multiplier: you calculate a factor to use for an adjustment. He did the calculation for the Willows, which resulted in a 15% downward adjustment, but he believes it understates the needed adjustment.

32. Mr. Bruteig presented an example of the impact of restricted rents on value in Petitioner's Exhibit I. Section 8 properties usually cost more to maintain as they have larger expenses. The subject expenses are higher even if they could achieve market rents. If there is a higher operating expense, the gross rent multiplier goes down. Additionally, the non-liquidity of the subject makes it less desirable in the market place. The usual expenses are \$3,000.00 per unit; the subject expenses are \$4,000.00 to \$5,000.00 per unit.

33. Mr. Bruteig testified that Respondent appraised the subject properties as individual properties, but they cannot be sold separately. Mr. Bruteig would bundle them as one property and then use larger property sales to determine a value. Smaller properties sell for more per unit; the owners often manage the properties themselves, resulting in lower expenses. Even using larger comparable sales, he would make an adjustment to show that all of the subject properties are not in the same location. The values are much, much higher than they should be for assessment purposes.

34. Mr. Bruteig testified that on page 14 of Respondent's Exhibit 1C-1 (amended and replaced by Respondent's Exhibit 1J), he would make a 65% adjustment for number of units. He thinks a 10-20% adjustment should be made for neighborhood. He would have made a 36% adjustment for average unit size. On page 14 of Respondent's Exhibit 1C-2, the time adjustment is too high and the year of construction adjustment is too low. Condominiums are usually sold for higher prices than when sold as apartments.

35. In cross-examination, Mr. Bruteig testified that he believed the Assessor probably did not know the subject properties could not be sold separately.

36. Petitioner's witness, Mr. James Colvin, CPA, Colvin & Associates, Inc., testified that he prepared Petitioner's Exhibit A, page 87. It is an income approach appraisal. The data is from the actual profit and loss statement of the subject.

37. Under cross-examination, Mr. Colvin acknowledged that the income approach cannot be used to value the subject property. However, he thinks it can be used as a tool. He is familiar with C.R.S. 39-1-103 (5)(a).

38. Petitioner is requesting a 2001 actual value of \$19,663.00 per unit for the subject properties, for a total value of \$6,803,398.00 for 346 total units.

39. Respondent's witness, Mr. Mike Van Donselaar, a Certified General Appraiser and Real Property Appraisal supervisor with the Denver County Assessor's Office, testified that there are 150 affordable housing complexes in the City, but many are tax exempt. He has been supervising Ms. Mun on valuing affordable housing. In early 2000, the ARL guidelines were published regarding affordable housing, but there is a distinction between rent subsidy and rent-restricted properties. For 2001, they sent letters to known affordable housing complexes and requested rent levels achieved for comparison to market rents. The first step was to determine what program they were in and then to compare the actual rent to market rent. It is assumed that rent subsidy properties are receiving market rent. The ARLs are guidelines that the Assessor is obligated to follow. There is no other way to handle Section 8 properties. Rent-restricted properties are valued according to ARL guidelines on page 7.31. There are few sales and they are not always good comparables. He



knows of only one complex that sold in the base period; it is a multi-level building located on Colorado Boulevard and is not comparable to the subject.

40. Mr. Van Donselaar testified that the income approach cannot be used in Colorado, so Respondent applied the market approach using the sales comparison method. They made adjustments for physical characteristic differences and looked for functional, economic and physical obsolescence issues. They can now also look at GRMs as a unit of comparison.

41. They arrive at a value based on the market approach, comparing rents to an index of fair market rents (FMR). They have looked at the HUD index, but the rents encompass pretty much the entire metro area. The subjects are located in a depressed area, so he feels the index is more for general use, not specific use. The ARL directs them to use HUD fair market rents, but also allows substitution of local market rent studies. He thinks the local market rent study would be more appropriate and would produce a more reasonable adjustment.

42. Mr. Van Donselaar testified that it is clearly stated in the legislative declaration that the GRM may be used as a unit of comparison. They have studied GRMs in general, but for affordable housing they have looked at a small group of comparables, reviewed them within the context of a larger group of activity to make sure they were similar, and then correlated to the GRM as a unit of comparison in the reconciliation. There have not been sales of affordable housing projects that could be used to develop a specific GRM.

43. Respondent used a traditional market approach to value looking at independent locations. Mr. Van Donselaar believes the assessment process requires them to look at each property separately. Each unit would have different investment profiles. They are not contiguous properties. There is a wider range of investors and potential purchasers for smaller properties. They tried to find comparable sales, though there is a general lack of sales of properties in the area, especially for 100-year old properties. They make adjustments for physical characteristics and physical, functional, and economic obsolescence if indicated. They looked at comparisons based on price per square foot and per unit. GRMs are not as consistent for smaller properties as they are for larger properties.

44. Mr. Van Donselaar spoke with Division of Property Tax (DPT) personnel, and Section 8 properties do not qualify for the EDMA process as they receive rent subsidies; they are handled the same way statewide. The EDMA process is not applicable to the subjects. They must be concerned with uniformity and they must be treated in the manner prescribed for rent subsidies, which states the EDMA does not apply.

45. Mr. Van Donselaar testified that expense ratios and capitalization rates are income approach items, not market approach. GRMs can be considered, but with caution.

46. Under cross-examination, Mr. Van Donselaar testified that he does not believe the Willow property receives less than market rent; the subsidy brings it up to the level of market rent. He has not received documentation that states one way or the other that the subject properties are or are not rent-restricted. He believes the subject is not rent-restricted; there has not been sufficient evidence to show that the property is rent-restricted. He does not believe the subject property

receives vouchers. He has rent analysis studies available in his file and knowledge of the local market. He does not have the local rent study available for this hearing.

47. Respondent must seek actual value of the subject as is shown in the statute. Mr. Van Donselaar does not know for a fact that the subject cannot be sold as separate buildings; he only became aware of that through the testimony heard on May 12, 2003. They did not use a GRM for the subject properties. For “The Trees,” he would look at gross rent multipliers from the most applicable sales. There are four sales from the same area that are similar to the subject in characteristics and the range is similar. They would compare the GRM to the subjects’ gross market rent.

48. Mr. Von Donselaar testified, under redirect, that at the time of value, they had some inclination that there was an affordable housing agreement in place, but did not know what program it might be in. Eventually they received information regarding the programs in which it was participating. Once they received documentation that it was a Section 8 property, it was clear that Section 8 properties do not qualify for the EDMA process. He would not use the GRMs presented to him. The GRM would need to be calculated from comparables that were specific to “The Trees.” Regarding page 123 of Petitioner’s Exhibit A, there is a ceiling on the amount of rent charged. He admitted that the subject does appear to be rent subsidized.

49. Respondent’s witness, Ms. Yong C. Mun, a Registered Appraiser and Senior Real Estate Appraiser with the Denver County Assessor’s office, presented the following indicators of value, based on the market approach:

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40033	Ash	\$ 512,000.00
40034	Ash	\$ 538,100.00
40035	Ash	\$ 851,200.00
40036	Ash	\$ 614,200.00
40037	Ash	\$ 486,900.00
40038	Ash	<u>\$ 480,000.00</u>
	Ash Apartments Total	\$3,482,400.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40039	Holly	\$1,060,400.00
40040	Holly	\$1,801,900.00
40041	Holly	\$1,237,100.00
40042	Holly	<u>\$ 213,900.00</u>
	Holly Apartments Total	\$4,313,300.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40043	Maple	\$ 716,300.00
40044	Maple	\$ 752,500.00
40045	Maple	\$ 401,800.00
40046	Maple	\$ 780,600.00
40047	Maple	\$ 733,200.00

40048	Maple	\$ 480,900.00
40049	Maple	\$ 725,700.00
40050	Maple	<u>\$ 718,200.00</u>
	Maple Apartments Total	\$5,309,200.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40051	Pine	\$ 904,100.00
40052	Pine	\$ 682,700.00
40053	Pine	\$ 732,800.00
40054	Pine	\$ 901,900.00
40055	Pine	\$ 417,600.00
40056	Pine	\$ 746,200.00
40057	Pine	<u>\$ 896,200.00</u>
	Pine Apartments Total	\$5,281,500.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40058	Willows	\$ 730,000.00
40059	Willows	\$ 424,700.00
40060	Willows	\$ 424,700.00
40061	Willows	\$ 420,700.00
40062	Willows	\$ 287,800.00
40063	Willows	\$ 321,800.00
40064	Willows	\$ 424,000.00
40065	Willows	\$ 335,300.00
40055	Willows	<u>\$ 860,900.00</u>
	Willows Apartments Total	\$4,229,900.00

50. Ms. Mun testified that she is familiar with “The Trees” apartments. The properties are scattered and built as separate apartment buildings. They have different schedule numbers and are in different locations. It is the HUD agreement that shows them as a complex. The purpose of the appraisals was to determine the subject properties value as of June 30, 2000. Respondent’s Exhibit 1I is a summary of all the complexes and also is the corrected version of the previous spreadsheets. She prepared 34 appraisals using only the market approach according to state statute and the Colorado Constitution.

51. Ms. Mun testified regarding her appraisal of 3318-3338 Clayton Street, Respondent’s Exhibit 1C-1 (amended by Respondent’s Exhibit 1J). Page 14 is the market analysis. She time-adjusted the comparables according to the original mass appraisal data from the relevant time period. The time adjustment was applied to all apartment buildings in three categories, according to the number of units. There must be at least 30 sales to determine a time adjustment. Regarding the year of construction adjustment, the grid is based on her experience; she used 1% for effective age differences between 10 and 20 years. Condition is the more likely needed adjustment. For an average unit size adjustment, she uses adjustments based on the percentage of size difference; she was hesitant to make a 30% adjustment. Regarding the basements or semi-apartments, the marketplace showed a reduced value, so she made upward adjustments (now corrected in Respondent’s Exhibit 1J). She made minor adjustments to the comparables for off-street parking

because the subject has no off-street parking. She made a percentage adjustment for traffic according to typical residential area traffic. There is heavy traffic at Comparable #2. She made adjustments for each direct neighborhood.

52. Ms. Mun testified that she selected her comparables by looking for a close location, similar number of units, size of units, and year of construction. If none were found she had to go to a further location for comparables. Her primary consideration was the number of units. There are different investor styles for smaller properties than for larger complexes; the use of sales with larger numbers of units would be misleading. The difference in the presented value versus the assigned value is due to the broader range of sale selections prior to the appeals hearings.

53. Regarding Petitioner’s appraisers, Ms. Mun testified that they are in the private sector and have more flexibility. The Assessor must follow state guidelines. You cannot just multiply a GRM to calculate a value. The comparables must be selected based on a reasonable rent range, vacancy rate, expenses, year of construction, and amenities. They use gross income and not expenses. The GRMs can be used as a check. There is an inconsistency in income, especially for Section 8 and for small properties. They send out questionnaires to collect income information and small property owners are afraid to furnish the information; some owners will not raise rents so that they can keep tenants. She would use the GRM, but it can be misleading due to a lack of data. Large unit properties are not similar to smaller properties and she could not use GRMs from larger properties to compare to smaller properties. The GRM is to be used as a check, or a review.

54. In cross-examination, Ms. Mun testified that she used 1.16% per month for time trending for 2-8 unit properties (based on 508 confirmed sales in Denver), 1.9% per month for 9-75 unit properties (based on 132 sales), and .9% per month for 76 or more units (based on 44 sales). The adjustments were based on statistics and multiple regression analysis. There may or may not be affordable housing sales in the time adjustment study. She only looked within Denver County to find affordable sale comparables. She did not feel she should treat Section 8 properties differently than other properties.

55. In redirect, Ms. Mun testified that the Assessor’s office used paired sales and multiple regression in the time trend analysis and included all confirmed sales; they did not separate government assisted sale properties.

56. Respondent assigned the following actual values to the subject property for tax year 2001:

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40033	Ash	\$ 505,200.00
40034	Ash	\$ 537,900.00
40035	Ash	\$ 489,200.00
40036	Ash	\$ 428,900.00
40037	Ash	\$ 372,500.00
40038	Ash	\$ 461,100.00
	Ash Apartments Total	\$2,794,800.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40039	Holly	\$ 853,800.00
40040	Holly	\$1,658,300.00
40041	Holly	\$1,082,500.00
40042	Holly	\$ 103,300.00
	Holly Apartments Total	\$3,697,900.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40043	Maple	\$ 744,200.00
40044	Maple	\$ 590,100.00
40045	Maple	\$ 325,100.00
40046	Maple	\$ 622,300.00
40047	Maple	\$ 455,700.00
40048	Maple	\$ 541,900.00
40049	Maple	\$ 571,300.00
40050	Maple	\$ 614,600.00
	Maple Apartments Total	\$4,465,200.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40051	Pine	\$ 720,600.00
40052	Pine	\$ 532,800.00
40053	Pine	\$ 635,600.00
40054	Pine	\$ 729,300.00
40055	Pine	\$ 303,800.00
40056	Pine	\$ 633,300.00
40057	Pine	\$ 886,800.00
	Pine Apartments Total	\$4,442,200.00

<u>Docket Number</u>	<u>Complex</u>	<u>Value</u>
40058	Willows	\$ 501,100.00
40059	Willows	\$ 407,800.00
40060	Willows	\$ 358,700.00
40061	Willows	\$ 416,100.00
40062	Willows	\$ 275,700.00
40063	Willows	\$ 310,000.00
40064	Willows	\$ 341,900.00
40065	Willows	\$ 326,300.00
40066	Willows	\$ 612,100.00
	Willows Apartments Total	\$3,549,700.00

57. Respondent is recommending a reduction for Docket Number 40048 to \$480,900.00 from the assigned value of \$521,900.00, and a reduction for Docket Number 40043 to \$716,300.00 from the assigned value of \$744,200.00.

58. In rebuttal, Mr. Marcrum testified that Section 236 apartments are rent controlled complexes; the government controls the rent based on budget driven rents. Five years ago, the government made sure you could not raise your rents above similar local area rents. They conduct a comparable rent study every 5 years to obtain annual increases. For Section 236 budget driven projects, a rent increase can be requested at the time of your Section 8 renewal. FMR is the maximum ceiling rent for the area. Section 236 cannot go to FMR unless the 5-year comparability study shows the rents have gone up in similar properties. "The Trees" are a Section 236 project that receives assistance through the Section 8 program. Once the flexibility loan is paid, Petitioner can earn a 6% return on their original investment.

59. Under cross-examination, Mr. Marcrum testified that the subject properties are both rent-restricted and rent-subsidized. Under both programs, HUD sets the rents they can charge. All of his tenants participate in Section 8.

60. In rebuttal, Mr. Mike Van Donselaar testified that he believes the subject is a hybrid of the two types of properties. The ARL does not address a hybrid property; there are no guidelines to handle hybrids. The properties exhibit some form of rent restrictions and an adjustment may be appropriate, but he is not sure how to make the adjustment. He feels contract rents are what the properties have received. He is not comfortable with the FMR, but he felt he should have been better prepared. The FMR index includes outlying counties, which have new construction and better amenities. They have an independent rent study to which they subscribe, but he does not have it with him.

## **CONCLUSIONS:**

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

2. Regarding the income approach, C.R.S. 39-1-103 (5)(a) states in pertinent part, "...All real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located....The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. ...". The Board heard several witnesses testify regarding the income approach and its applicability to the subject property. The subject property is classified as residential property and only the market approach to value may be used to establish an ad valorem value. The Board gave no weight to any testimony or documentation that referred to the income approach other than as it applied to the proper application of the Gross Rent Multiplier (GRM) and its use as a unit of comparison in the valuation process regarding market value.

3. There were basically two issues of contention in this case: 1) Is the subject property

valued correctly using market data, regardless of rent restrictions? and 2) Is the subject property rent-restricted? This Board has carefully examined all the evidence and testimony presented and has determined that the subject property is overvalued. The subject property is a rent-restricted property entitled to the application of the EDMA formula as set forth in the ARL.

4. Regarding the market value of the subject properties as if not rent-restricted, the Board has examined the comparable sales presented by both parties. Respondent valued the subject properties as 34 individual buildings rather than five apartment complexes. Petitioner argues and the Board agrees that the subject properties cannot be sold as individual buildings due to their long-term HUD agreements and financing terms, and thus should be valued based on the number of units within each complex. Having made this determination, the Board determined that Respondent’s comparable sales required further adjustment for number of units. The Board also was convinced that further adjustment should be made to some of the comparables for unit size, neighborhood and time adjustment. The Board was not convinced that the time adjustment calculated from the sales of non-rent-restricted properties would be the same for rent-restricted properties. The Board determined that the subject properties should be valued at a per unit value of \$35,000.00, prior to further reduction for rent restriction.

5. The Board was convinced that the subject properties are rent-restricted, primarily due to the Section 236 expense-driven rent restrictions, which are not allowing the subject to achieve Fair Market Rents (FMR) even though they have Section 8 tenants. The Board has determined that the application of the EDMA formula is appropriate due to the sub-market rents achieved at the subject property. The Board would prefer to calculate the rent loss using local market rent studies, but neither party presented evidence as to the local market rental rates. The Board therefore had no choice but to use the HUD Fair Market Rents as presented in Petitioner’s Exhibit G.

6. The Board calculated the EDMA factor of .824 for the Ash Apartments using the following data:

<u># of Bedrooms</u>	<u># of Units</u>	<u>Contract Rent</u>	<u>FMR Rent</u>
0 BR	4	\$466.00	\$ 458.00
1 BR	13	\$517.00	\$ 547.00
2 BR	32	\$585.00	\$ 728.00
3 BR	4	\$644.00	\$1,011.00
Total Units	53		

7. The Board calculated the EDMA factor of .861 for the Holly Apartments using the following data:

<u># of Bedrooms</u>	<u># of Units</u>	<u>Contract Rent</u>	<u>FMR Rent</u>
0 BR	6	\$408.00	\$458.00
1 BR	59	\$489.00	\$547.00
2 BR	17	\$560.00	\$728.00
Total Units	82		

8. The Board calculated the EDMA factor of .705 for the Pine Apartments using the following data:

<u># of Bedrooms</u>	<u># of Units</u>	<u>Contract Rent</u>	<u>FMR Rent</u>
2 BR	73	\$513.00	\$728.00

9. The Board calculated the EDMA factor of .826 for the Willows using the following data:

<u># of Bedrooms</u>	<u># of Units</u>	<u>Contract Rent</u>	<u>FMR Rent</u>
1 BR	35	\$495.00	\$547.00
2 BR	<u>28</u>	\$547.00	\$728.00
Total Units	63		

10. The Board calculated the EDMA factor of .391 for the Maple Apartments using the following data:

<u># of Bedrooms</u>	<u># of Units</u>	<u>Contract Rent</u>	<u>FMR Rent</u>
1 BR	16	\$454.00	\$ 547.00
2 BR- A	19	\$512.00	\$ 728.00
2 BR- B	31	\$531.00	\$ 728.00
3 BR- A	5	\$599.00	\$1,011.00
3 BR- B	9	\$633.00	\$1,011.00
4 BR	<u>3</u>	\$706.00	\$1,193.00
Total Units	83		

11. The Board concluded that the 2001 actual value of the subject properties should be reduced to the following:

Ash Apartments	\$1,528,520.00 or \$28,840.00 per unit
Holly Apartments	\$2,471,070.00 or \$30,135.00 per unit
Pine Apartments	\$1,801,275.00 or \$24,675.00 per unit
Willows Apartments	\$1,821,330.00 or \$28,910.00 per unit

12. The Board concluded that the 2001 actual value of the Maple Apartments should be \$1,135,855.00 or \$13,685.00 per unit, based on the entire complex of 9 parcels and 83 units. Only 8 parcels and 75 units are a part of this appeal. The 2001 actual value for the subject property 8 parcels and 75 units should be reduced to \$1,026,375.00.

13. The Board affirms the assigned value of \$103,300.00 for Docket 40042, a parking lot associated with the Holly Apartments.



**ORDER:**

Respondent is ordered to reduce the 2001 actual value of the subject property as follows:

**ASH APARTMENTS**

<b><u>Docket #</u></b>	<b><u>Parcel ID</u></b>	<b><u># Units</u></b>	<b><u>2001 BAA Actual Value</u></b>
40033	05101-09-028-000	6	\$173,040.00
40034	05103-21-001-000	10	\$288,400.00
40035	05103-23-005-000	17	\$490,280.00
40036	05103-25-034-000	8	\$230,720.00
40037	05104-24-007-000	6	\$173,040.00
40038	05151-14-001-000	6	\$173,040.00
<b>TOTAL FOR ASH</b>		<b>53</b>	<b>\$1,528,520.00</b>

**HOLLY APARTMENTS**

<b><u>Docket #</u></b>	<b><u>Parcel ID</u></b>	<b><u># Units</u></b>	<b><u>2001 BAA Actual Value</u></b>
40039	02349-21-038-000	24	\$723,240.00
40040	02353-10-009-000	30	\$904,050.00
40041	02354-19-002-000	28	\$843,780.00
<b>TOTAL FOR HOLLY</b>		<b>82</b>	<b>\$2,471,070.00</b>

**MAPLE APARTMENTS**

<b><u>Docket #</u></b>	<b><u>Parcel ID</u></b>	<b><u># Units</u></b>	<b><u>2001 BAA Actual Value</u></b>
40043	02252-40-015-000	10	\$136,850.00
40044	02262-12-001-000	11	\$150,535.00
40045	02262-45-009-000	6	\$82,110.00
40046	02262-46-028-000	10	\$136,850.00
40047	02265-34-001-000	10	\$136,850.00
40048	02265-34-011-000	7	\$95,795.00
40049	02351-21-014-000	11	\$150,535.00

	000		
	02352-07-015-		
40050	000	10	\$136,850.00
<b>TOTAL FOR MAPLE</b>		75	\$1,026,375.00

**PINE APARTMENTS**

<b><u>Docket #</u></b>	<b><u>Parcel ID</u></b>	<b><u># Units</u></b>	<b><u>2001 BAA Actual Value</u></b>
40051	02352-12-006-000	13	\$320,775.00
40052	02352-12-007-000	10	\$246,750.00
40053	02352-19-013-000	10	\$246,750.00
40054	02352-26-020-000	12	\$296,100.00
40056	02353-04-015-000	10	\$246,750.00
40057	02353-10-010-000	12	\$296,100.00
40055	02353-01-015-000	6	\$148,050.00
<b>TOTAL FOR PINE</b>		73	\$1,801,275.00

**WILLOW APARTMENTS**

<b><u>Docket #</u></b>	<b><u>Parcel ID</u></b>	<b><u># Units</u></b>	<b><u>2001 BAA Actual Value</u></b>
40058	02252-40-024-000	10	\$289,100.00
40059	02261-13-022-000	7	\$202,370.00
40060	02262-02-011-000	6	\$173,460.00
40061	02262-07-016-000	9	\$260,190.00
40062	02262-30-012-000	4	\$115,640.00
40063	02262-47-011-000	5	\$144,550.00
40064	02265-11-012-000	6	\$173,460.00
40065	02265-12-023-000	4	\$115,640.00
40066	02265-22-011-000	12	\$346,920.00
<b>TOTAL FOR WILLOW</b>		63	\$1,821,330.00

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 27<sup>th</sup> day of August, 2003.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown



Rebecca A. Hawkins

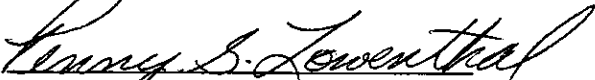


Karen E. Hart

This decision was put on the record

AUG 27 2003

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

  
Penny S. Lowenthal