

<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 COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Mark S. Berry, Esq. Address: 1 Wren Littleton, Colorado 80127 Phone Number: (303) 932-2909 E-mail: berrymp1@aol.com Attorney Reg. No.: 025023</p>	<p><b>Docket Number: 40135</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:

**3638 High Street, Denver, Colorado  
(Denver County Schedule No. 02261-05-016-000)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property consists of an eight-unit apartment building that is a part of the Maple Apartment complex. The subject property is located at 3638 High Street, Denver, Colorado

## **ISSUES:**

Petitioner contends that the subject property is rent-restricted and is overvalued by Respondent. There are no similar HUD sales to use in the market approach. The subject property should be adjusted due to its sub-market rents.

## **Respondent:**

Respondent contends that the subject property, although part of 35 non-contiguous parcels, has 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 property is rent-subsidized, not rent-restricted and therefore it should not be adjusted per the ARL regulations.

## **FINDINGS OF FACT:**

1. All testimony and evidence from consolidated Docket Numbers 40033-40066 is herein incorporated into this hearing, as relevant to the subject property.
2. Petitioner is requesting a 2001 allocated actual value of \$19,663.00 per unit for the subject property, for a total value of \$157,304.00 for the eight-unit building.
3. Respondent's witness, Ms. Yong C. Mun, a Registered Appraiser and Senior Real Estate Appraiser with the Denver County Assessor's office, presented an indicated value of \$426,400.00 for the subject property, based on the market approach.
4. Respondent assigned an actual value of \$419,600.00 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. 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 property as if not rent-restricted, the Board has examined the comparable sales presented by both parties. Respondent valued the subject property as an individual building rather than as part of an 83-unit, multi-building apartment complex. Petitioner argues and the Board agrees that the subject property cannot be sold as an individual building due to its long-term HUD agreements and financing terms, and thus should be valued based on the number of units within the project. 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 property 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 property is 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 it has 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. Therefore, the Board 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 .391 for the Maple Apartment complex 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		

7. 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 1 parcel and 8 units are part of this appeal. The 2001 actual value for the subject property should be reduced to \$109,480.00.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property of \$109,480.00.

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.

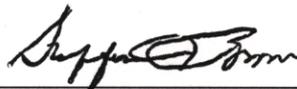
In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 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

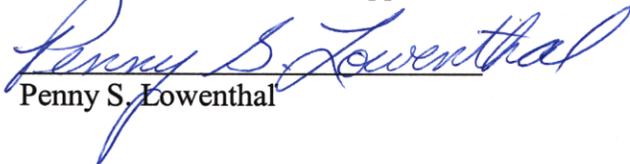


Karen E. Hart

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