

<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>THOMPSON MICHIE ASSOCIATES/FAIRWAY APARTMENTS, LLC,</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 W. Gerganoff, Esq. Frank &amp; 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><b>Docket Number: 40167</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 15, 2003, Debra Baumbach and Rebecca Hawkins presiding. Petitioner was represented by Mark Gerganoff, Esq. Respondent was represented by Maria Kayser, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**10700 East Dartmouth Avenue, Denver, Colorado  
(Denver County Schedule Nos. 06355-00-005-000, 06355-00-18-000,  
06355-00-008-000, 063500-00-019-000)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1999 and 2000. The subject property consists of 959 apartments contained in thirty-seven buildings. The project was built in three phases from 1974 to 1979. Amenities include a clubhouse, two pools, three tennis courts, and covered and uncovered parking spaces. The land area is comprised of four parcels with a total of 1,285,347 square feet, or 29.508 acres. The four parcels have one owner and function as one site.

**ISSUES:**

**Petitioner:**

Petitioner contends that the subject property, known as the Kennedy Ridge Apartments, has been over valued. Petitioner believes prices were flat during the base period. Furthermore, the subject property is in original condition with deferred maintenance. Comparable sales are offered to support the value of \$32,400,000.00. These comparable sales include the sale of the subject property on January 4, 1996.

**Respondent:**

Respondent contends that the sale of the subject property on January 4, 1996 is the best indicator of value. The appraisal prepared by Lawrence M. Delsart, MAI supports an upward time trend, and a value of \$38,656,800.00.

**FINDINGS OF FACT:**

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

Market:	\$32,366,250.00
Gross Rent Multiplier:	\$34,911,314.00

2. Based on the market approach, Petitioner's witness determined a value of \$32,366,250.00, and testified to a reconciled value of \$32,000,000.00 for the subject property.

3. Petitioner's witness presented six comparable sales ranging in sales price from \$2,850,000.00 to \$32,400,000.00 and in size from 53,335 to 663,994 square feet. After adjustments were made, the sales ranged from \$28,652.00 to \$36,034.00 per unit.

4. Petitioner's witness, Mr. Todd J. Stevens, testified that he personally inspected the subject property on more than one occasion. The subject property has a nice location adjacent to Kennedy Golf Course. It contains a total of 959 apartment units,

common areas, and support buildings on 29.5 acres. The buildings are of wood frame construction; walk up style on three levels. The garden level layout provides an interior hallway on the lower floor and stacked exterior stairways on the two upper floors. This type of construction requires intensive maintenance and the buildings required paint at the time of assessment. The units have not had any renovation except new paint and carpet. They have original countertops, cabinets and fixtures. Mr. Stevens testified that the buildings were built between 1977 and 1979. He used an effective year of construction of 1977.

5. Mr. Stevens presented Petitioner's Exhibit B, a replacement for page 21 of his appraisal report (Petitioner's Exhibit A), to correct errors and to reflect the deduction for personal property. Mr. Stevens testified that he looked at sales in both the base period and the extended base period. He presented six comparable sales, including the sale of the subject property, as sale 6. Due to the subject's superior location next to a golf course, he adjusted all of the comparable sales for inferior location.

6. Mr. Stevens testified that sale 2 is a smaller, garden level style complex in Adams County. It is older in year of construction, has some mountain views, and the individual units are larger in square footage. Sale 3 is a mid-rise located near the old Stapleton Airport, which he believes is an inferior location. It is older in year of construction, smaller in complex size and larger in unit size. Sale 4 is also a mid-rise with an inferior location. The complex is smaller in size, inferior in quality, and the units are smaller in square footage. The garden level style of the subject is inferior to the mid-rise style. The mid-rise construction typically has four to seven floors with elevators. These buildings typically sell for more per unit. Sale 5 is a garden level style complex located close to the subject property. It is similar in style, layout and amenities, but is older in year of construction and larger in total complex size. Sale 6 is the sale of the subject property that occurred January 4, 1996. Mr. Stevens did not make any adjustments to sale 6.

7. Mr. Stevens testified that the subject property contains some studio units that generate a different income stream than the one, two and three bedroom units. Comparable sales 3, 5 and 6 also contain studio units. He did not know the actual rents, so he used potential rents as of June 30, 1998 for the gross rent analysis. These rents were supported by rents he found in the neighborhood. He analyzed gross rent multipliers from sales and testified to a value of \$34,506,154.00 by this approach. Mr. Stevens testified that the gross rent multiplier approach tends to push value higher since it assumes a 100% occupancy rate. The subject property has never achieved a 100% occupancy rate.

8. Mr. Stevens testified that he researched the current base period and the extended base period for time trending. He found no evidence to support an increase in value over time. He examined Denver, Arapahoe, Douglas, Jefferson and Adams Counties. He found no sales or re-sales of apartments built in the 1970's. He concluded that vacancies and rents were stable during that time, with vacancies ranging from 10-

12%. The market vacancy rate was approximately 20% at the time of the sale of the subject property in 1996.

9. Under cross-examination, Mr. Stevens testified that the corrections shown in Petitioner's Exhibit B do not change total value, only price per square foot. He testified that he is paid on a contingency fee basis and was engaged for a consulting assignment that included making recommendations to the owner.

10. Under cross-examination, Mr. Stevens testified that he considered his entire analysis of the comparable properties, but gave considerable weight to the sale of the subject property in 1996. Regarding his time trending analysis, he researched all sales of properties with 25 units or more, occurring from 1970 through 1979. He analyzed 32 sales in Denver County from January 1996 through June 1998. He also looked at Respondent's appraisal and the comparable sales used. He testified that sale 2 has a wide interior hallway plan, one and two bedroom units and nice grounds. He testified that this sale is applicable and would use it if he found an increasing time trend. He testified that sale 3 is a gated community built in the 1980's. This complex has one, two and three bedroom units with more amenities such as a year round pool, individual washer/dryer hookups and ceiling fans. He obtained this information from the property manager.

11. Under redirect, Mr. Stevens testified that Respondent's sale 3 was built in the 1980's and includes washer/dryer hookups and ceiling fans. These features started appearing during construction in the 1980's. Apartments built in the 1970's do not have these amenities. Due to the vinyl siding on sale 3, it requires very little exterior maintenance when compared to the frame siding on the subject. The frame siding requires regular intensive maintenance. Sale 3 also has underground parking and security.

12. Upon questions from the Board, Mr. Stevens testified that there is some market support for a location adjustment. From other analyses he has completed, he believes an age adjustment of 1% per year is appropriate. He testified that sale 3 was updated, and that other sales had been repainted and recarpeted. The subject property was updated after the sale in 1996.

13. Petitioner did not present a cost or income approach to value.

14. Petitioner is requesting a 1999 and 2000 actual value of \$32,000,000.00 for the subject property.

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

Market:       \$38,656,800.00

16. Respondent did not present a cost or income approach to value.

17. Respondent's witness presented three comparable sales ranging in sales price from \$7,000,000.00 to \$32,400,00.00 and in size from 113,583 to 613,600 square feet. After adjustments were made, the sales ranged from \$37,296.00 to \$53,481.00 per unit or \$61.00 to \$66.00 per square foot.

18. Mr. Delsart testified that he inspected the subject property on August 15, 2003. The units on the third floor have vaulted ceilings, skylights, balconies and the best views of either the mountains or the golf course. He believes Kennedy Golf Course has a positive influence on value. None of the units front on Havana Street that carries heavy traffic. He described the subject property as well maintained with attractive grounds. Amenities include 285 carports and 1,154 uncovered parking spaces, a clubhouse, two heated pools, three tennis courts, hot tub, laundry areas and volleyball courts.

19. Mr. Delsart testified that he searched for sales in a southeast location that sold close to the date of value. He wanted the sales to have similar general characteristics, be in large building groups and be similar in year of construction. Proximity to the subject was also important and he felt that the golf course influenced value. He made adjustments for time, differences in features, unit size, covered parking, views and total size of the complex.

20. Mr. Delsart testified that the subject property had all uncovered parking spaces on the date of sale in January 1996. He allotted \$300.00 per unit for personal property and adjusted at .7% per month for a positive time trend. Mr. Delsart testified he compared the sale of the subject to the comparables used and also relied on the two other sales. He feels the indicated price per square foot for sale 3 is well supported. Mr. Delsart testified Petitioner's sales 1, 2 and 4 are smaller complexes than the subject. Since larger projects are typically purchased by institutional investors, he felt these sales were not good comparables. The sales used have a history of physical problems including frozen and broken pipes.

21. Mr. Delsart testified that his positive time adjustment was based on various types of research including statistical studies of value changes within the city and surrounding counties. He personally analyzed matched pairs, price per unit and price per square foot, as it may have changed over time. Mr. Delsart testified that he did not personally complete the statistical studies for the time adjustment analysis; it was done between January 1997 and June 30, 1998. He analyzed complexes of planned building groups of 100 units or more within the city of Denver and surrounding counties. Mr. Delsart agreed with Mr. Stevens that smaller units sell for higher prices. He testified that Petitioner's comparable sales had various problems with soils, plumbing and heating. He obtained this information from files in his office and does not remember the dates of the files he reviewed.

22. Upon questions from the Board, Mr. Delsart testified that the subject property did need exterior paint. He used an analysis of another project for his personal

property adjustment. Mr. Delsart testified to doing an extensive analysis for time trending by looking at six counties. He utilized a sales ratio analysis within the city of Denver, comparing assigned values to sale prices and trending over time. He analyzed and graphed matched pairs for price per square foot and price per unit.

23. The Respondent presented another witness, Mr. Mike Van Donselaar, supervisor in the Denver County Assessor's Office. During 1999, his area of responsibility was the subject neighborhood, as well as the time trending analysis. He testified that the time adjustment was based on three models of two different base periods. The models were grouped by total number of units. The models were audited and all passed. He analyzed numerous pairs of sales and re-sales of properties. He also looked at other counties' time adjustments for support. Outside publications supported, or were identical to, what he had found for a time adjustment. Mr. Van Donselaar testified that industry experts agree that apartment values and rents were driven up during the base period.

24. Under cross-examination, Mr. Van Donselaar testified that the subject property would fall into the third model group pertaining to complexes of 90 or more units. When asked how many properties in this model had 500 or more units, the witness responded that very few complexes fall into that category. This category also included mid-rise buildings of four to seven floors. The subject property is not considered a mid-rise, but is a garden level style. Mr. Van Donselaar testified that if smaller complexes were increasing in value, then larger complexes should also be increasing. However, some speculation would be involved.

25. During rebuttal, Mr. Stevens addressed the physical problems Mr. Delsart referenced with regard to Petitioner's comparable sales. Sale 3 did have heating problems, but they were repaired long before the sale occurred. Sale 5 was owned by one of his clients, and to the best of his knowledge, the property did not have any contamination or settlement issues. If there were any issues, they were solved prior to the sale. Mr. Stevens testified that only a few units in the subject property actually have a golf course view.

26. Mr. Stevens testified that he does not feel Respondent's sale 2 is similar to the subject property as it has interior hallways. He concluded that Mr. Delsart leaned toward a price per square foot approach rather than a price per unit approach. Mr. Stevens testified during rebuttal that he feels the price per unit is more appropriate than the price per square foot. The price per square foot approach has a tendency to get overstated.

27. During rebuttal, Mr. Stevens reiterated that few sales built in the 1970's were available during the base period. Properties built in the 1980's and 1990's are not comparable to the subject and have very distinct differences. He testified that properties with more than 500 units would not be increasing in value due to the limited pool of purchasers. Properties with a smaller number of units have more buyers available.

28. Under cross-examination, Mr. Stevens testified that no sales similar in size and year of construction that showed a positive increase in value were available. He disagrees that the market as a whole was increasing during the base period. Mr. Stevens does not believe that the sales used by Respondent were comparable.

29. In response to Mr. Stevens' rebuttal testimony, Mr. Delsart testified that sale 2 has a pool, but is inferior to the subject. It is plain and austere looking, and the hallways are inferior to the subject. The subject has a series of landings with some interior hallways, and sale 2 has long interior hallways. Regarding the appropriateness of the price per square foot method, Mr. Delsart testified that other professionals use this method as a unit of comparison. He testified that it is not necessarily true or logical to assume that projects of more than 500 units are not increasing as fast as the market in general.

30. Under cross-examination, Mr. Delsart testified that the pool of investors for larger projects includes insurance companies and Real Estate Investment Trusts (REITS's), and that they may be fewer in number, but that they have more money.

31. Respondent assigned an actual value of \$36,531,200.00 to the subject property for tax years 1999 and 2000.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 1999 and 2000 valuation of the subject property was incorrect.

2. The Board was convinced that the pool of investors for larger properties, such as the subject property, is limited in comparison to smaller properties. The Board was not persuaded that values for larger apartment properties were stable during the base period or the extended base period. The Board could give little weight to Petitioner's lack of a time adjustment. Petitioner needed to show market support for a flat market resulting in no positive time adjustment.

3. The Board was satisfied that Respondent sufficiently analyzed data throughout the Denver metro area to determine an increase in value over time. However, the Board maintains that larger projects should be analyzed separately due to the number of units and the smaller pool of investors. The Board accepted the Respondent's time adjustment of 0.7% per month.

4. The Board recognizes the difficulty in finding sales comparable to the subject property due to the subject's large number of units. Both parties raised issues regarding the appropriateness and suitability of the comparables used. The Board determined that Petitioner's sales 3, 5 and 6, as well as Respondent's Sales 1 and 3 were the most appropriate. The 1996 sale of the subject property was used as Petitioner's sale 6 and Respondent's sale 1.

5. The Board carefully considered all the evidence and testimony presented. The Board applied adjustments for personal property, time, location, age and project size to the sales selected. After the Board made these adjustments, the price per unit ranged from \$27,576.00 to \$38,467.00 or from \$36.00 to \$56.00 per square foot. The Board was persuaded by the sale of the subject property and concluded to a price per unit of \$36,000.00 or \$56.00 per square foot.

6. The Board concluded that the 1999 and 2000 actual value of the subject property should be reduced to \$34,500,000.00.

**ORDER:**

Respondent is ordered to cause an abatement/refund to Petitioner, based on an actual value for the subject property of \$34,500,000.00 for tax years 1999 and 2000.

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 7<sup>th</sup> day of November, 2003.

BOARD OF ASSESSMENT APPEALS

*Rebecca Hawkins*

Rebecca A. Hawkins

*Debra A. Baumbach*

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*  
Penny S. Lowenthal

