

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DERMOT AVENTINE I, LLC AND DERMOT AVENTINE II, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain, Esq. Address: 3962 S. Olive St. Denver, Colorado 80237 Phone Number: (303) 759-0087</p>	<p>Docket Number: 41201</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 23, 2004, Debra A. Baumbach and Steffen A. Brown presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Alice J. Major, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**3255-3257 S. Parker Road, Denver, Colorado
(Denver County Schedule No. 06354-00-019-000)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property consists of four seven-story apartment buildings with a total net building size of 353,956 square feet. The subject has a total of 336 units.

ISSUES:

Petitioner:

Petitioner contends that the subject has been overvalued and that the November 4, 1998 sales price does not reflect some personal property, rent concessions and increasing vacancies. Respondent's 18% time trending factor is not justified and the appropriate unit of comparison was not used.

Respondent:

Respondent contends that the subject has been correctly valued based on the market approach.

FINDINGS OF FACT:

1. William A. McLain, Esq. presented the appeal on behalf of Petitioner.
2. Mr. Todd A. Stevens, Petitioner's witness, presented an indicated value of \$20,100,000.00 or \$60,000.00 per unit for the subject property based on the market approach.
3. Mr. Stevens described the subject as a mid- to high-rise apartment complex containing 336 rentable units in four buildings built in 1979. Each building has two passenger elevators and one service elevator. The subject is located on an 8.28-acre site east of I-225 with frontage to Parker Road. Issues affecting the subject include noise from Interstate 225, which is within 100 feet, and ingress and egress that it shares with a Taco Bell Restaurant.
4. Mr. Stevens testified that the subject has the following areas of deferred maintenance as illustrated in Petitioner's Exhibit A, pages 16 through 30:
 - Surface parking shows deferred maintenance
 - Racquetball court in poor condition
 - Units have "standard" 1970's kitchens
 - Gutters do not drain properly
 - Peeling and cracking drywall on patio areas
 - Water damage in the underground garage
 - Hot water tank leaks
 - Ceiling over pool area leaks
 - Hydraulic fluid leaks from elevators, which are in need of modernization
 - Outdated central laundry, which cannot compete with newer complexes

As indicated in the Addenda of Petitioner's Exhibit A, the cost of capital improvements exceeds \$1,000,000.00.

5. The subject property was purchased on November 4, 1998 for \$23,200,000.00. Mr.

Stevens believes that the buyer, an investment company out of California, overpaid for the property and had no experience in Colorado. The purchase price also included approximately \$100,000.00 in personal property.

6. Referring to the last page of Addenda in Petitioner's Exhibit A, Mr. Stevens testified that the subject is an under-performing asset. It was 100% occupied when it was purchased but the vacancy rate has increased even though rental concessions, including two months free rent, have been offered.

7. Mr. Stevens presented six comparable sales ranging in sales price from \$4,600,000.00 to \$24,000,000.00 and in net building size from 53,875 to 412,162 square feet. The comparable sales ranged from \$55.84 to \$85.38 per square foot and from \$41,319.00 to \$69,048.00 per unit. After adjustments were made, the sales ranged from \$57.06 to \$83.68 per square foot or from \$46,691.00 to \$69,048.00 per unit.

8. As indicated in Petitioner's Exhibit A, pages 33 through 35, Mr. Stevens adjusted the six comparable sales for location, age, size, quality/appeal and unit area. In addition, Mr. Stevens testified that:

- Comparable Sale 1, Penn House, was built in 1972. Occupancy was 96% to 98%. The property backs to open space, is near a hospital, is smaller than the subject, has smaller units and inferior appeal.
- Comparable Sale 2, Cambrian, is closest to the subject, similar in size, newer than the subject, has a superior location and backs to a park. About 75% of the units were refurbished but the average unit size is smaller.
- Comparable Sale 3, Prescott, is three stories in height, is smaller in unit size, is located very close to two parks and has superior appeal.
- Comparable Sale 4, West Hills, is located in Jefferson County, backs to a park, has views, and is older in year of construction.
- Comparable Sale 5, Monaco South, was built in 1972, has a location similar to the subject but with less traffic, and is smaller with smaller unit sizes.
- Comparable Sale 6 is the subject property.

9. Mr. Stevens testified that none of the sales were purchased for condominium conversion.

10. Mr. Stevens testified that there is a wide range in the adjusted prices per square foot. Therefore, he believes that the price per unit is the appropriate unit of comparison as evidenced by Comparable Sale 3, which has smaller units but commands higher rents than the subject's larger units. Most investors, Mr. Stevens testified, would purchase apartment properties based on the price per unit rather than the price per square foot.

11. Mr. Stevens disagrees with the quality adjustment shown for Respondent's Sale 2, which is also Petitioner's Sale 3. He also disagrees with Respondent's adjustments for market appeal and time trending. Mr. Stevens testified that Respondent's Sale 3 was converted to condominiums and therefore does not comply with §39-8-108 C.R.S.

12. Mr. Stevens testified that he analyzed the Gross Rent Multiplier (GRM) as a check for reasonableness (Reference Petitioner's Exhibit A, page 40). The range indicated from the sales used was 5.68 to 7.72. He used a 6.8 GRM after deducting personal property to arrive at an indicated value of \$20,400,000.00 or \$60,700.00 per unit.

13. Petitioner is requesting a 2001 actual value of \$20,100,000.00 for the subject property.

14. Respondent's witness, Mr. Lawrence M. Delsart, MAI, a Certified General Appraiser with the Denver County Assessor's Office, presented an indicated value of \$27,257,000.00 for the subject property based on the market approach.

15. Respondent's witness presented three comparable sales ranging in sales price from \$7,100,000.00 to \$23,200,000.00 and in size from 98,142 to 353,956 square feet. After adjustments were made, the sales ranged from \$7,699,760.00 to \$27,257,056.00, which equates to 61,510.00 to \$81,122.00 per unit or \$73.00 to \$81.00 per square foot.

16. Mr. Delsart testified that the subject property's condition is normal for its age of 45 years. He believes that the subject has a competitive advantage since it has underground parking, which provides protection and a feeling of more security. The subject's additional features include gated controlled access, laundry facilities on each floor, extra kitchen cabinets, frost-free refrigerators, self-cleaning ovens, double sinks, luxurious interiors and balconies with mountain views.

17. Mr. Delsart testified that adjustments to Respondent's comparable sales were based on mass appraisals, sales ratios, paired sales, price trends per square foot and per unit, and multiple regression analysis. Respondent's comparable sales were not adjusted for deferred maintenance since all of the sales have typical deferred maintenance.

18. Respondent's Comparable Sale 1 is the subject property and required only a time adjustment of .9% per month, for a total adjustment of 18%. Respondent's Comparable Sale 2, Woodcreek, is also Petitioner's Comparable Sale 3, Prescott. No adjustment was made for the fact that this comparable sale has carports instead of garages. Adjustments were made for time, superior views, inferior quality of construction and superior unit size. Mr. Dalsart testified that typically, the more floors a building has, the higher the quality. Comparable Sale 3 was adjusted for age, views/location, unit size, number of units and parking. It also fronts I-25, which is inferior to the subject.

19. With regard to Petitioner's Exhibit A, pages 16 through 30, Mr. Delsart believes that the subject has a pleasant atmosphere, the pool and the views are nice, the kitchens are acceptable,

and that the bathrooms have double sinks. He testified that the minor brick problems are common with a building of this age.

20. Mr. Delsart testified that it was appropriate to use Comparable Sale 3, which was to be converted into condominiums, as it was similar to the subject. Mr. Delsart testified that Petitioner's Sale 1 sold outside the base period and was much smaller than the subject with only 88 units. Petitioner's Sale 3 is structurally different from the subject and is a walk-up with no elevators. Petitioner's Sale 4 is located 15 miles away in Jefferson County and has no elevators. Mr. Delsart believes the subject property is more appealing than Petitioner's Sale 5.

21. Mr. Delsart concluded to an adjusted range of \$77.00 to \$81.00 per square foot. He testified that his study showed size to be the most important factor and that rents are usually based on square footage. Therefore, he believes square footage is a more appropriate unit of comparison.

22. As to Petitioner's GRM analysis, Mr. Delsart questioned the rent figures since the subject's actual GRM multiplier at the time of sale was 7.72. The rental income shown in the addenda of Petitioner's Exhibit A is higher than what was reported in Petitioner's GRM analysis. In addition, Mr. Delsart indicated that the dates of Petitioner's repairs are post-base period. Furthermore, when spread over the years of ownership, the \$1,088,000.00 is less than 1%, which he feels is typical and would not affect value.

23. In cross-examination, Mr. Delsart testified that the subject's number of parking spaces was confirmed with the management company, and that the personal property included lawnmowers, refrigerators, stoves and swimming pool equipment. He reiterated that high-rise buildings are typically more expensive and he does not agree that gross rents were flat during the base period.

24. In rebuttal, Mr. Stevens testified that he sees the commercial office market using square footage as a unit of comparison but that apartments are valued on a per unit basis. Mr. Stevens indicated that the rents used in his GRM analysis are potential rents and that the capital improvement expenses do not include balcony repairs.

25. In rebuttal, Mr. Delsart agreed that vacancy rates have increased since the subject sold, but not prior to the date in question. Vacancy rates have not been reflected in sales prices because prospective sellers are still holding on and not decreasing their asking prices.

26. Respondent assigned an actual value of \$27,167,200.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.
2. The Board was persuaded that the subject's lack of remodeling had a negative affect on potential renters when compared to newer or renovated properties.
3. The Board agrees that the GRM, as a unit of comparison or check of reasonableness, is a helpful tool, but Colorado Revised Statutes mandate that residential properties be valued based on the market approach. In the Board's opinion, an analysis on a per unit basis is more typical of the market than an analysis on a square foot basis.
4. There is a difference of opinion as to the strength of the Denver metro market during the base period. Petitioner maintains that the market was flat but admitted that there was a gain in the Denver metro market up to the end of 2000. Respondent maintains that the market was increasing prior to and during the base period at .9% per month but gave little support for such a large increase. The Board believes that the market was increasing but at a rate less than .9% per month. The Board placed more weight on Petitioner's evidence and testimony indicating that the market had slowed and that vacancy rates and rental concessions were on the increase as shown in Petitioner's P&L statement.
5. With the exception of the subject property, Respondent's sales are not similar to the subject in net building size, number of units or unit mix. Petitioner's Comparable Sales 2 and 4 are the most similar to the subject in building size, number of units and unit mix and are therefore given most weight.
6. In re-calculating the value of the subject property, the Board applied a .5% per month adjustment for time to Petitioner's Comparable Sale 4. The Board was not persuaded that adjustments for location or age were appropriate, as the subject has high visibility, is close to major roads leading to support services and has some views. The Board agrees that Petitioner's Sale 3 has a smaller average unit size and would be inferior but 75% of the units had been renovated which would negate the adjustments. The resulting price per unit ranged from \$62,141.00 to \$63,900.00.
7. Based on all of the evidence and testimony presented, the Board concluded that the 2001 actual value of the subject property should be reduced to \$21,300,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property of \$21,300,000.00.

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 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 make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 3rd day of September 2004.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Steffen A. Brown
Steffen A. Brown

This decision was put on the record

SEP 03 2004

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

