

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LENNAR/US HOMES,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William A. McLain Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941</p>	<p>Docket Number: 42083</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 21, 2005 and May 12, 2005, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Steven J. Dawes, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**9990 Park Meadows Drive, Lone Tree, Colorado
(Douglas County Schedule No. R0428678)**

Petitioner is protesting the 2003 actual value of the subject property, a 75,000 square foot (net rentable) single tenant office building.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued, as the sales and income used to value the subject do not reflect the post-September 11, 2001 depressed economy.

Respondent:

Respondent contends that the subject property was valued correctly. Petitioner's assertion regarding market conditions is not substantiated by comparable sales or market evidence.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevensof Stevens & Associates, presented the following indicators of value, as shown in Petitioner's Exhibit A-1:

Market:	\$7,947,100.00
Income:	\$6,091,875.00

2. For the market approach, Mr. Stevens presented an indicated value of \$7,947,100.00 for the subject property based on his analysis of three sales. Petitioner's Sale 1 was listed during the 18-month base period but sold outside the base period. Petitioner's Sale 2, a 185,351 square foot multi-tenant building built in 1999, sold in September 2001 for a price of \$210.41 per square foot. Mr. Stevens applied a total negative adjustment of 43 percent to Sale 2 for location, age, economic characteristics, physical characteristics and size. Petitioner's Sale 3 is an 85,935 square foot multi-tenant office building that sold in June 2001 for \$133.85 per square foot. Mr. Stevens applied a total negative adjustment of 18 percent to Sale 3 for location, age and economic characteristics. Mr. Stevens concluded to a value of \$100.00 per square foot for the subject based on comparable sales.

3. Petitioner's witness presented an income approach to derive a value of \$6,091,875.00 for the subject property. Mr. Stevens presented comparable lease information on six properties, with leases dating from April 2001 to August 2002. Rents ranged from \$11.25 per square foot net of expenses to \$22.15 per square foot including expenses. Mr. Stevens adjusted these lease rates for tenant improvements, free rent concessions, location, size, age and physical features. He concluded to a rate of \$12.00 per square foot net of expenses.

4. Mr. Stevens cited several market reports showing vacancy rates for the subject's area ranging from approximately 24 to over 30 percent. He concluded to a 25 percent vacancy rate for the subject based primarily on the mid-year 2002 CoStar vacancy report for Class A office buildings located within a one-mile radius of the subject.

5. Mr. Stevens deducted a five percent management fee and a five percent factor for reserves for replacements, to conclude to a net operating income of \$609,188.00 for the subject. He then applied a capitalization rate of 10 percent based on market sales and an Integra report. The resulting value under the income approach was \$6,091,875.00.

6. In cross-examination, Mr. Stevens testified that the actual lease rate for the subject, pursuant to the 1999 lease agreement, was \$16.75 per square foot net of expenses.

7. Petitioner is requesting a 2003 actual value of \$6,500,000.00 for the subject property, based primarily on the income approach.

8. Respondent's witness, Mr. Mike Shafer, a Certified Residential Appraiser with the Douglas County Assessor's Office, presented the following indicators of value:

Market: \$12,556,418.00
Cost: \$9,757,000.00
Income: \$10,200,000.00

9. Mr. Shafer analyzed four land sales ranging in price from \$8.25 to \$10.50 per square foot to conclude to a land value for the subject at \$8.25 per square foot, the lower end of the range. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$9,757,000.00.

10. In the market approach, Respondent's witness analyzed and relied on five comparable sales ranging in sales price from \$150.00 to \$189.00 per gross square foot. Mr. Shafer considered five additional sales located in Arapahoe County. Mr. Shafer made no adjustments to the comparable sales. He testified that he placed the most weight on Sales 1 and 2, indicating a range in value of \$158.00 to \$189.00 per square foot. Mr. Shafer concluded to the lower end of the range, at \$158.00 per square foot, for a total indicated value of \$12,556,418.00.

11. In the income approach, Mr. Shafer relied on three comparables with lease rates ranging from \$15.50 to \$18.30 per square foot net of expenses to conclude to a \$16.00 per square foot rental rate for the subject, net of expenses. Mr. Shafer deducted 15 percent for vacancy and 5 percent for operating expenses to conclude to a net operating income of \$969,000.00. He applied a 9.5 percent capitalization rate to derive an indicated value of \$10,200,000.00 for the subject property.

12. Respondent's witness concluded to an appraised value of \$11,000,000.00, supporting the \$9,419,738.00 value assigned to the subject property for tax year 2003.

13. The hearing was continued to May 12, 2005 to address Petitioner's standing to pursue this appeal. As shown in Petitioner's Exhibit H, the subject property's owner of record is Spiral Lone Tree, LLC. A letter dated April 25, 2005 was issued by Spiral Lone Tree, LLC authorizing Lennar Colorado, LLC, d/b/a Lennar/U.S. Home(s) to protest/appeal property tax assessments for the subject property. Spiral Inc. issued a letter dated April 20, 2005 authorizing Lennar Homes to protest/appeal property tax assessments for the subject property. Spiral Lone Tree, LLC is the lessor

and U.S. Home Corporation is the lessee in the lease dated August 14, 2000. Pursuant to the terms of the lease, U.S. Home Corporation is responsible for payment of all "Real Estate Taxes." U. S. Home Corporation is the initial member of Lennar Colorado LLC. Lennar Colorado, LLC transacts business under the name of Lennar Homes and U.S. Home. An Agency Agreement was attached to the Petition to the Board of Assessment Appeals that gives Stevens & Associates Cost Reduction Specialists, Inc. the authority to act as agent on behalf of Lennar/US Homes Corporation and all subsidiaries for property tax assessment years 2003, 2004, 2005, 2006, and prior years. Petitioner's Exhibit H and Respondent's Exhibit 13 contain various copies of public records including an Application for Authority, Certificate of Good Standing, Certificate of Trade Name, Articles of Organization, Statement of Merger, Annual Report, and Articles of Amendment for the various entities.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was valued correctly for tax year 2003.
2. The Board was convinced that the Respondent's 2003 valuation was well supported by all three approaches to value. All three approaches indicated a higher value than the subject's assigned value for tax year 2003.
3. The Board is aware that market conditions were depressed immediately after September 11, 2001. However, Petitioner relied on sales that occurred just prior to or immediately after September 11, yet made sizeable economic adjustments reportedly to reflect market conditions at the time. The Board finds Petitioner's adjustments for economic conditions to be redundant, thereby resulting in a below market value for the subject.
4. Additionally, in the income analysis, Petitioner concluded to a market rate for the subject using lease comparables that had been adjusted for tenant finish allowance, rent concessions and other physical factors. Typically, tenant finish improvements are viewed as capital expenditures and are not deducted as operating expenses. Also, rental concessions are not an allowable deduction. While it is customary to make a deduction for vacancy and collection loss, the typical investor would not deduct the unusually high rate of 25 percent based solely on current market conditions, particularly for a single tenant property. Consequently, the net operating income determined by the Petitioner was understated, again resulting in a below market value.
5. Based on all of the evidence and testimony presented, the Board affirms Respondent's assigned value of \$9,419,738.00 for tax year 2003.
6. Regarding agency, it was unclear in the initial hearing held on April 21, 2005 as to whether Petitioner, Lennar/US Homes, had standing to authorize an appeal and whether Petitioner's agent, Stevens and Associates Cost Reduction Specialists, Inc., had the authority to file the appeal on Petitioner's behalf. It is clear from the documentation submitted in the May 12, 2005 hearing that U.S. Home Corporation, Lennar Corporation, Lennar Colorado, LLC, Lennar Homes, U.S. Home,

and Lennar/U.S. Homes are all interrelated parties. The Board is satisfied that Lennar/U.S. Homes has standing to pursue this appeal, that Stevens and Associates Cost Reduction Specialists, Inc. has been granted authorization to represent Petitioner in these proceedings, and that the Board has jurisdiction to hear the appeal.

ORDER:

The petition is denied.

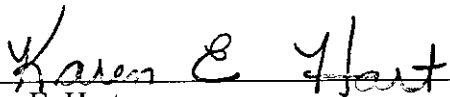
APPEAL:

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 3rd day of June 2005.

BOARD OF ASSESSMENT APPEALS



Karen E. Hart

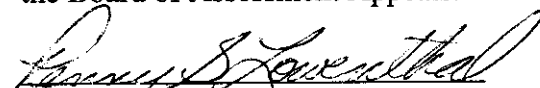


Sondra W. Mercier

This decision was put on the record

JUN 03 2005

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



Penny S. Lowenthal

