

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILSON COMPANIES,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</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 Attorney Reg. No.: 6941</p>	<p>Docket Number: 43046 and 43887</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 25, 2005, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by William McLain, Esq. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2003 and 2004 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1625 and 1675 South Birch Street, Denver, Colorado
(Denver County Schedule No. 06193-00-048-000)**

The subject property is a brick mid/high-rise apartment complex known as the Fine Art Apartments. Built in 1972, it consists of one 10-story building and one 12-story building with elevators and 194 one- and two-bedroom units. Amenities include a shared parking garage with 140

spaces and an additional 88 service spaces, laundry facility, indoor swimming pool, party room, and racquetball/handball court.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax years 2003 and 2004.

Respondent:

Respondent contends that the subject property was valued correctly for tax years 2003 and 2004 based on the market approach.

FINDINGS OF FACT:

1. Both parties agreed to a consolidation of Dockets 43046 and 43887 for tax years 2003 and 2004.

2. Petitioner's witness, Todd Stevens, a Registered Appraiser, presented the following indicator of value:

Market:	\$9,894,000.00
Personal Property:	- 84,673.00
Indicated Value:	\$9,809,327.00

3. Mr. Stevens presented four comparable sales but testified that Sales 1 and 2 carried little weight because they were purchased for conversion to condominiums. He cited §39-8-108 (5)(e) C.R.S., which states, "In using the market approach to determine the value of residential real property, if the assessor has knowledge of the conversion from one residential use to a different residential use, such conversion shall create a rebuttable presumption that the sale of such property is not a comparable sale for purposes of establishing the value of a property having a similar prior residential use."

4. Mr. Stevens testified that Petitioner's Sales 3 and 4, although low-rise walk-up buildings, were arm's-length transactions. Sale 3 sold for \$17,170,000.00 or for \$49,768.00 per unit and \$68.72 per square foot. Sale 4 sold for \$13,800,000.00 or \$51,493.00 per unit and \$62.56 per square foot. Mr. Stevens made the following adjustments to both sales: +3% for inferior locations; +5% for smaller overall sizes; -15% for Sale 3's 8% vacancy and -25% for Sale 4's 0% vacancy in comparison to the subject's 12%; +5% for inferior quality, appeal, deferred maintenance, and common amenities; and +2% for smaller average unit sizes of 724 and 753 square feet in comparison to the subject's 927 square feet. He neither addressed nor made adjustments for Sale 4's mixed use

with both commercial and residential structures. Adjusted prices per unit were \$49,768.00 for Sale 3 and \$51,493.00 for Sale 4. Adjusted prices per square foot were \$68.72 for Sale 3 and \$62.56 for Sale 4. Mr. Stevens, citing all four sales, reconciled to \$55.04 per square foot or \$51,000.00 per unit for an indicated value of \$9,894,000.00. He then deducted \$84,673.00 for personal property, a figure he secured from the Denver County Assessor's office, to arrive at a final indicated value of \$9,809,327.00.

5. Mr. Stevens testified that, because rent concessions were typical in the subject's marketplace and because there was a disparity between listing and selling prices, he did not apply the gross rent multiplier as an indication of value.

6. Mr. Stevens testified that the subject property owners supplied a list of deferred maintenance with repairs estimated at \$579,000.00. Mr. Stevens made a site inspection of these items but did not review the repair bids. Deferred maintenance is included in the "comp quality" adjustment in Petitioner's market grid, and covers the following:

- \$220,000.00 for replacement of four elevators;
- \$194,000.00 for unit maintenance and renovation;
- \$ 35,000.00 for a new swimming pool roof;
- \$ 15,000.00 for pool and hot tub re-plastering;
- \$ 15,000.00 for new racquetball court floors and walls;
- \$ 25,000.00 for a new heating system;
- \$ 75,000.00 for a new roof on one building.

7. Mr. Stevens testified that deferred maintenance for the subject's elevators remained an issue despite satisfactory inspections and that he included age and aesthetics in the "comp quality" adjustment in Petitioner's market grid.

8. Mr. Stevens testified that Respondent's Sales 1, 3, and 4 involved 1031 tax exchanges, which are the same as trades, and are considered non-qualifying sales pursuant to Volume III, page 3.26 of the Assessor's Reference Library (ARL).

9. Mr. Stevens contended that Respondent's Sale 3 was sold for conversion to condominiums and should be disallowed as a comparable.

10. Petitioner is requesting 2003 and 2004 actual values of \$9,809,327.00 for the subject property.

11. Respondent's witness, Kenneth Drybread, a Certified Residential Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

Market:	\$14,300,000.00
Deferred Maintenance:	<u>- 455,000.00</u>
Indicated Value:	\$13,845,000.00
Gross Rent Multiplier:	\$13,498,200.00

12. Based on the market approach, Respondent's witness presented a final indicated value of \$13,845,000.00 for the subject property.

13. Mr. Drybread presented four comparable sales ranging in sales price from \$3,750,000.00 to \$29,900,000.00. After adjustments were made, the sales ranged from \$13,387,366.00 to \$16,320,450.00. Adjusted prices per square foot ranged from \$74.49 to \$90.81. Adjusted prices per unit ranged from \$69,007.00 to \$84,126.00. He reconciled to \$79.57 per square foot and \$73,711.00 per unit for an indicated value of \$14,300,000.00. Mr. Drybread deducted \$455,000.00 for repair of major items provided by the Petitioner and confirmed with the property manager. The list, itemized on page 47 of Respondent's Exhibit 1, does not include elevator replacement because all inspections were satisfactory.

14. Mr. Drybread's location adjustments were based on average rents for the areas in which the comparable sales were located. He testified that Respondent's Sales 1 and 3 were located in areas of overall higher rents and carried negative adjustments and that Respondent's Sales 2 and 4 were located in areas of overall lower rents and carried positive adjustments.

15. Mr. Drybread testified that his research indicated that the subject's vacancy rate was similar to the market rate, and therefore, he did not make adjustments in the market grid.

16. With regard to Petitioner's contention that 1031 tax exchange comparables are property trades and are considered non-qualifying sales per ARL Volume III, page 3.26, Mr. Mike Van Donselaar, with the Denver County Assessor's Office, testified that 1031 exchanges involve sheltering proceeds of a sale so as to avoid taxes and subsequent reinvestment to a replacement property. Two separate closings are involved, and moneys are deposited with a qualified intermediary. He testified that roughly one-half of apartment transactions involve 1031 exchanges. Whereas 1031 exchanges involve money changing hands, trades involve property changing hands and are not considered arm's-length transactions.

17. Mr. Drybread testified in cross-examination that Respondent's Sale 2 included townhome units, which typically demand higher rents but that he made no corresponding adjustment.

18. Mr. Drybread testified that Respondent's Sale 3 was not a condominium conversion. No declaration for conversion was filed, and no physical evidence of conversion exists.

19. In response to Petitioner's contention that Petitioner's Sales 1 and 3 were not listed by recognized marketing sources, and thus, were not arm's-length transactions, Mr. Drybread testified that large apartment complexes have a limited marketplace and that brokers approach apartment owners interested in purchases with greater financial benefits.

20. Respondent assigned an actual value of \$15,651,200.00 to the subject property for tax years 2003 and 2004, but is recommending a reduction in value to \$13,845,000.00.

CONCLUSIONS:

1. Based on the evidence and testimony presented, the Board was convinced that the subject property was incorrectly valued for tax years 2003 and 2004.

2. Based on §39-8-108 (5)(e) C.R.S. regarding condominium conversions, the Board is convinced that Petitioner's Sales 1 and 2 do not qualify as comparables and should not be included in the reconciliation of market value. The Board finds that the absence of any adjustment for the residential and commercial components of Petitioner's Sale 4 decreases reliance on it as a comparable sale. Therefore, only Sale 3 can be considered.

3. Despite conflicting testimony from Petitioner and Respondent, the Board is not convinced that Respondent's Sale 3 was a condominium conversion and finds it to be a qualifying comparable. The Board agrees with Respondent that 1031 tax exchanges are not property trades and are not referenced in the ARL Volume III, page 3.26. The Board determined that Respondent's Sales 1, 3, and 4 are qualifying sales. Respondent's Sale 2 is not considered to be a qualifying sale as it included townhome units.

4. The Board disagrees with Respondent's comparison of comparable sales' rents to average rents in their specific areas rather than comparing them to the subject's rents, and the Board disagrees with Respondent's failure to address vacancy in the market grid. It also finds that the Respondent addressed the subject's deferred maintenance twice, once in the "physical" line item in the market grid and again for "deferred maintenance" in the final reconciliation.

5. The Board removed the "physical" adjustment from Respondent's Sales 1, 3 and 4. Based on Petitioner's Sale 3 and the recalculated indicated values of Respondent's Sales 1, 3 and 4, the sales ranged from \$49,768.00 to \$79,790.00 per unit. The Board was convinced that Respondent's sale 3 was most similar to the subject because of age, and high-rise construction, indicating a value of \$68,610.00 per unit or \$13,310,340.00.

6. Based on all of the evidence and testimony presented, the Board concluded that the 2003 and 2004 actual value of the subject property should be reduced to \$13,310,340.00.

ORDER:

Respondent is ordered to reduce the 2003 and 2004 actual values of the subject property to \$13,310,340.00.

The Denver County Assessor is directed to change his/her 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 5th day of May 2005.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

MAY 04 2005

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

