

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 43562

Petitioner:

AVIRONE LLC,

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

ORDER ON STIPULATION

THE BOARD OF ASSESSMENT APPEALS hereby vacates its Order dated September 19, 2006 and amended September 21, 2006 and substitutes the Stipulation of the parties as follows:

FINDINGS OF FACT AND CONCLUSIONS:

1. Subject property is described as follows:

County Schedule Nos.: 00031-01-001-000; 00031-01-002-000

Category: Abatement

Property Type: Vacant Land

2. Petitioner is protesting the 2001 and 2002 actual value of the subject property.

3. The parties agreed that the 2001 actual value of the subject property should be reduced to:

Schedule Number 00031-01-001-000

Total Value: \$298,570.00

Schedule Number 00031-01-002-000

Total Value: \$331,620.00

(Reference Attached Stipulation)

4. The parties agreed that the 2002 actual value of the subject property should be reduced to:

Schedule Number 00031-01-001-000

Total Value: \$314,500.00

Schedule Number 00031-01-002-000

Total Value: \$349,400.00

(Reference Attached Stipulation)

5. The Board concurs with the Stipulation.

ORDER:

Respondent is ordered to reduce the 2001 and 2002 actual value of the subject property, as set forth above.

The Denver County Assessor is directed to change his/her records accordingly.

DATED and MAILED this 11th day of October 2006.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

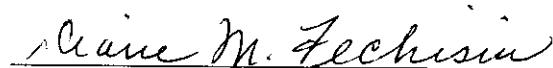


Karen E. Hart

This decision was put on the record

OCT 10 2006

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



Diane M. Fechisin



BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
1313 Sherman Street, Room 315
Denver, Colorado 80203

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AVIRONE LLC

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Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS

Attorneys for Denver County Board of Commissioners

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Docket Number:

43562

Schedule Number:

0031-01-001-000
0031-01-002-000

STIPULATION (AS TO TAX YEARS 2001 & 2002 ACTUAL VALUES)

Petitioner, AVIRONE LLC, and Respondent, DENVER COUNTY BOARD OF COMMISSIONERS, hereby enter into this Stipulation regarding the tax years 2001-2002 valuation of the subject properties, and jointly move the Board of Assessment Appeals to enter its order based on this Stipulation.

The Petitioner(s) and Respondent agree and stipulate as follows:

1. The properties subject to this Stipulation are described as:

7050 – 7080 Tower Road
Denver, Colorado

2. The subject properties are classified as vacant land properties.

3. Attachment A reflects the actual values of the subject properties, as assigned by the Assessor for tax years 2001-2002.

4. Attachment B reflects the actual values of the subject properties after a timely appeal, as assigned by the Denver County Board of Commissioners.

5. After further review and negotiation, the Petitioner and Respondent agree to the tax years 2001-2002 actual values of the subject properties, as shown on Attachment C.

6. The valuations, as established on Attachment C, shall be binding with respect to only tax years 2001-2002.

7. Brief narrative as to why the reduction was made:

Parties settled appellate rights.

8. Both parties agree that the hearing scheduled before the Board of Assessment Appeals be vacated.

DATED this 28th day of September, 2006.

Petitioner

Barry J. Goldstein
Sterling Equities Inc.
950 S. Cherry Street #320
Denver, CO 80246
(303) 757-8865

Denver County Board of Commissioners

By: Eugene J. Kottenstette
Eugene J. Kottenstette #6391
Assistant City Attorney
201 West Colfax Avenue, Dept. 1207
Denver, CO 80202
Telephone: 720-913-3275
Fax: 720-913-3180

Docket Number: 43562

3. Attachment A reflects the actual values of the subject properties, as assigned by the Assessor for tax years 2001-2002.

4. Attachment B reflects the actual values of the subject properties after a timely appeal, as assigned by the Denver County Board of Commissioners.

5. After further review and negotiation, the Petitioner and Respondent agree to the tax years 2001-2002 actual values of the subject properties, as shown on Attachment C.

6. The valuations, as established on Attachment C, shall be binding with respect to only tax years 2001-2002.

7. Brief narrative as to why the reduction was made:

Parties settled appellate rights.

8. Both parties agree that the hearing scheduled before the Board of Assessment Appeals be vacated.

DATED this 28th day of September, 2006.

Petitioner

Barry J Goldstein

Barry J. Goldstein # 2218
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ATTACHMENT A

ACTUAL VALUES, AS ASSIGNED BY THE ASSESSOR

Docket Number 43562

Values listed below apply to both tax years 2001 and 2002.

<u>Schedule Number</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Actual Value</u>
0031-01-001-000	\$348,800.00	\$0	\$348,800.00
0031-01-002-000	\$387,400.00	\$0	\$387,400.00

ATTACHMENT B

ACTUAL VALUES, AS ASSIGNED BY THE
DENVER COUNTY BOARD OF EQUALIZATION AFTER A TIMELY APPEAL

Docket Number 43562

Values listed below apply to both tax years 2001 and 2002.

Schedule Number	Land Value	Improvement Value	Total Actual Value
0031-01-001-000	\$348,800.00	\$0	\$348,800.00
0031-01-002-000	\$387,400.00	\$0	\$387,400.00

ATTACHMENT C

ACTUAL VALUES, AS AGREED TO BY ALL PARTIES

Docket Number 43562

For Year 2001

<u>Schedule Number</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Actual Value</u>
0031-01-001-000	\$298,570.00	\$0	\$298,570.00
0031-01-002-000	\$331,620.00	\$0	\$331,620.00

For Year 2002

<u>Schedule Number</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Actual Value</u>
0031-01-001-000	\$314,500.00	\$0	\$314,500.00
0031-01-002-000	\$349,400.00	\$0	\$349,400.00

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
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Docket No.: 43562

Petitioner:

AVIRONE LLC,

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on July 24, 2006, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by Barry Goldstein, Esq. Respondent was represented by Eugene Kottenstette, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2001 and 2002.

PROPERTY DESCRIPTION:

Subject property is described as follows:

7050 – 7080 Tower Road, Denver, Colorado
Denver County Schedule Nos. 00031-01-001-000 and 00031-01-002-000

The subject property consists of one 46,506 square foot parcel of vacant land and one 51,654 square foot parcel of vacant land.

FINDINGS OF FACT:

1. The subject property is part of a six lot subdivision (one lot is still held by the original developer and has a different zoning than the subject property). Various Avirone entities own the other five lots in the subdivision that are zoned for commercial mixed use. The lot owners built hotels on three of the lots. The two vacant lots that are the subject of this appeal are zoned for mixed commercial use, with restaurant as the primary use. Individually, each parcel of vacant land is too small for hotel development.

2. Mr. Evan Makovsky is the manager of all of the Avirone LLCs, though each LLC is a separate entity. Mr. Makovsky, a real estate broker for 35 years, marketed the subject property for sit-down restaurant use through his business contacts, but there was no interest as the property is located in an undeveloped area and insufficient residential development exists to support a restaurant. Petitioner asserts that it is not the end user of the property and that the subject land is available for sale.

3. Petitioner presented a full market value of \$7.25 per square foot. Respondent presented a full market value of \$7.50 per square foot. Both values were determined using the market approach with a base year value date of June 30, 2000. The appropriate full market value for the subject properties was determined to be \$7.50 per square foot.

4. As less than 80% of the subdivision lots were sold, Petitioner discounted the full market value using the subdivision discounting procedure. Petitioner used a 10-year holding period and an 11% discount rate to arrive at a discounted value of \$2.55 per square foot. Petitioner used a discount factor for the present worth of 1, column 4.

5. The January 1998 sale date occurred within the extended five year data gathering period. Petitioner based the raw land valuation on the sales price **allocated** to the subject property (\$3.09 per square foot) by Mr. Makovsky when Avirone entities purchased all five lots. The **allocated** price was adjusted upward 5% for time to arrive at a raw land value of \$3.24 per square foot. As the discounted value can not be less than the raw land value, Petitioner concluded to an actual value of the subject properties of \$3.24 per square foot.

6. Respondent determined that the raw land value is \$5.85 per square foot based on **market sales**. We concur.

7. Respondent contends that subdivision discounting should not be applied as the owner is the end user and the property is being held for development. The Petitioner developed the three hotel sites and it is reasonable to expect that the Petitioner will also develop the subject property. Even if the lots are held for sale, Respondent believes a maximum two-year sellout period should be utilized. Respondent pointed out other discrepancies in Petitioner's methodology including 1) the value should be different for each tax year according to Division of Property Tax (DPT) guidelines; and 2) the proper discounting rate factors to be used are the present worth of 1 per period, column five, not column four.

8. Petitioner is requesting the following actual values for tax years 2001 and 2002:

Denver County Schedule	0031-01-001-000	\$150,700.00
Denver County Schedule	0031-01-002-000	\$167,400.00

9. The actual values assigned for tax years 2001 and 2002 are as follows:

Denver County Schedule	0031-01-001-000	\$348,000.00
Denver County Schedule	0031-01-002-000	\$347,400.00

CONCLUSIONS OF LAW:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. Petitioner purchased the two subject lots for resale and as such the properties remained on the market after purchase. Therefore, the subdivision was less than 80% sold as of the assessment date and vacant land discounting should apply.

3. A two-year sell-out period is reasonable for the assessment date of January 1, 2001, based on the history of the actual sales of the subdivision. Five of the lots sold within one year, three of which were sold to an end user and immediately developed.

4. A risk rate from the high end of the DPT guidelines and a discount rate of 11% is appropriate. The subject properties are subdivision lots; therefore a present worth factor of 1.712523¹ for a two-year sell-out period was applied to the full market value of \$7.50 per square foot. The resulting value was \$6.42 per square foot rounded.

5. The Board concluded that the 2001 actual value of the subject property should be reduced as follows:

Denver County Schedule	0031-01-001-000	\$298,570.00
Denver County Schedule	0031-01-002-000	\$331,620.00

6. Respondent presented sufficient probative evidence and testimony to prove that the tax year 2002 valuation of the subject property was correct.

7. For the intervening year, DPT guidelines require that the sellout period be reduced by one year. This resulted in a sellout period of one year. Therefore, discounting does not apply for the 2002 assessment year. The Board affirms Respondent's assigned value for 2002 as follows:

Denver County Schedule	0031-01-001-000	\$348,000.00
Denver County Schedule	0031-01-002-000	\$347,400.00

ORDER:

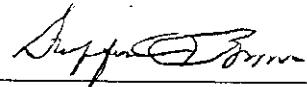
Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject properties as follows:

Denver County Schedule	0031-01-001-000	\$298,570.00
Denver County Schedule	0031-01-002-000	\$331,620.00

¹ 1 per period, column 5.

DATED and MAILED this 21st day of September 2006.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

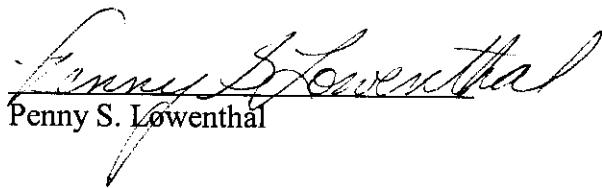


Karen E. Hart

This decision was put on the record

SEP 20 2006

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


Penny S. Lowenthal