

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>FIRST SOUTH BIRCH COMPANY,</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: Mark W. Gerganoff, Esq. Frank & 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>Docket Number: 39966</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 2, 2003, Debra A. Baumbach and Steffen A. Brown presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Charles T. Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

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

Petitioner is protesting the 2001 actual value of the subject property, a multi-family apartment complex containing a total of 195 units in two buildings that were built in 1972.

ISSUES:

Petitioner:

Petitioner contends that the units are in original condition with no updating, that there is noticeable deferred maintenance and that they have been overvalued.

Respondent:

Respondent contends that the assigned value is supportable and has been properly valued using the market approach.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd J. Stevens, a Registered Appraiser, presented an indicated value of \$9,300,000.00 for the subject property based on the market approach.

2. Petitioner's witness presented six comparable sales ranging in sales price from \$3,200,000.00 to \$8,925,000.00 and in size from 54,915 to 160,138 square feet, or a price per square foot of \$42.01 to \$68.88. After adjustments were made, the sales ranged from \$3,101,599.00 to \$10,174,500.00, or \$46.16 to \$63.54 per square foot.

3. Mr. Stevens testified that the subject property consists of two buildings located on a 3.329-acre site. The property at 1675 South Birch Street is a 10-story building containing 99 units. The property at 1625 South Birch Street is a 12-story building with 95 units. The subject property has a total of 198,264 square feet of gross apartment area. Amenities, as described in Petitioner's Exhibit A, page 12, include a total of 228 parking spaces (140 are underground), laundry facility, swimming pool, party room, racquetball court and whirlpool.

4. Mr. Stevens testified that the subject has deferred maintenance. Each building has two elevators that are original and require modernization; none of the 194 units have been updated; the roof over the swimming pool needs to be replaced; the swimming pool and hot tub need to be replastered; the racquetball court needs new floors and walls; the HVAC requires maintenance; and the roof of one of the buildings needs to be replaced. Total deferred maintenance is estimated at \$579,000.00. In addition, there is some concrete decay and some pipes need to be replaced, which was not included in the deferred maintenance estimate.

5. Mr. Stevens presented six comparable sales found in Petitioner's Exhibit A, page 25. He indicated that sales 5 and 6 were outside the base period and used for an analysis between mid-rise and high-rise buildings. Comparable sale 1 is a similar property with an inferior location and is smaller than the subject. Comparable sale 2 was built in 1965 and is smaller than the subject in building and unit size. Comparable sale 3, in the Capitol Hill area, was purchased for a condominium conversion, and is superior in location as it is close to the Central Business District. An adjustment of 20% was given for the condition of sale (conversion to condominium) since he felt the buyer paid a premium due to the time it takes to initiate the paperwork and go through hearings, which is between six months and one year, with no certainty that the conversion would be accepted.

Comparable sale 4 has a good location near Denver University and was another condominium conversion. Comparable sale 5 is a mid-rise building about one mile from the subject, but similar in location. Comparable sale 6 consisted of two low-rise buildings. He testified that the time adjustment calculation was incorrect, and should be 9% rather than 14.5% shown in Petitioner's Exhibit A.

6. In cross-examination, Mr. Stevens testified that the deferred maintenance was adjusted for in the complex quality and appeal area. Mr. Stevens indicated that the pipes were not leaking during the base period, and he does not know if the elevators passed inspection. Mr. Stevens admitted that the building size shown in Petitioner's Exhibit A, page 25, may be gross square feet in some cases rather than net square feet, but the change would not significantly affect value. He further stated that the time adjustment for comparable sale 2 should be 2% rather than 1%. With regard to the comparable quality, Mr. Stevens testified that the adjustment deals with overall quality and considers the amenities of the sales. For example, sale 1 does not have a pool or garage; sale 2 has no covered parking; sale #5 has no underground parking. Regarding the 20% adjustment for condominium conversion, Mr. Stevens testified that he talked to investors and looked at what was done in the past, but that he had not completed any matched pair sales analyses. With regard to sale 3, which transferred twice, it was his understanding that the conversion took place on the first transfer. The second transfer was between the partners, and they would not disclose the reason for the difference in documentary fees. As to deferred maintenance estimates, Mr. Stevens admitted he did not have any bids.

7. Upon questioning from the Board, Mr. Stevens assumed that both buildings had leaking pipes. Elevator modernization and other repair estimates were ascertained from the owner, who had obtained bids.

8. Petitioner is requesting a 2001 actual value of \$9,300,000.00 for the subject property.

9. Respondent's witness, Mr. Kenneth Drybread, a Certified Residential Appraiser with the Denver County Assessor's Office, presented an indicated value of \$14,875,000.00 for the subject property based on the market approach.

10. Respondent's witness presented four comparable sales ranging in sales price from \$5,400,000.00 to \$7,200,000.00 and in building size from 21,675 to 53,229 square feet. After adjustments were made, the sales ranged from \$12,806,500.00 to \$18,467,000.00.

11. Mr. Drybread described the property as two high-rise buildings that occupy one site. Built in 1972, they contain 179,725 net rentable square feet. There are 140 underground parking spaces and 88 aboveground spaces. The subject also contains an indoor pool, spa and community rooms. He considers the subject to be well maintained and in typical condition.

12. Mr. Drybread defined a high-rise as a building that is nine stories and above, while a mid-rise building is between five and eight stories. He looked for properties with an average unit size, configuration and age as close to the subject as possible. Respondent's comparable sales are found and described in Respondent's Exhibit 1, pages 24 through 37. Mr. Drybread testified that a time adjustment was made based on a time trending analysis as shown on page 45 of Respondent's

Exhibit 1. It indicates that buildings with 90 units or more should be adjusted 1.1% per month. Condition is based on a physical inspection of each property. As to the conversion adjustment, Mr. Drybread testified that he chose a property (789 Clarkson Street) that had sold twice in the base period. He felt it was a valid transaction because the buyers and sellers were different people, and the difference after adjustments indicated a 5% conversion adjustment. Sale 4 has a superior location in central Denver on a quiet street near Cheesman Park.

13. Mr. Drybread testified that the adjustments give a mid-point indication of value of \$76,300.00 per unit for the subject.

14. Mr. Drybread testified that the elevators seemed to work fine. He checked with the City Inspector and found that the elevators had passed inspection twice in 1999. Both buildings seemed to be in the same general condition. Mr. Drybread interviewed the Property Manager who did have some concern about the condition of the pool, the roof over the pool, and racquetball courts. He felt that Petitioner's estimate for repairs would not be spent all at once, and he did not take this amount at face value.

15. Respondent's witness testified that Petitioner's witness had not been consistent since the building sizes in Petitioner's Exhibit A, page 25 were net rather than gross sizes, and the time adjustment was not consistent. With the exception of 2225 Buchtel Boulevard, Mr. Drybread did not use any of the Petitioner's sales because they were mid-rise buildings and potential buyers would look at the height.

16. Under cross-examination, Mr. Drybread admitted that sales 1 through 4 had not been advertised for sale, but that they were available on the open market. He did not know if they were advertised on the Internet or in trade publications. It was his experience that this type of property is typically not listed. With regard to the sale used for a conversion adjustment (3909 Logan Street) information was obtained from the deed, TD 1000 and CoStar Comps.

17. In redirect, Mr. Drybread testified that comparable sales 2 through 4 were from CoStar Comps; that a high-rise is marketed differently from single-family homes; and that the time adjustment comes from a database of 132 sales using a regression analysis.

18. Respondent assigned an actual value of \$14,874,900.00 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 is convinced that the buildings suffer from some deferred maintenance. Both Petitioner and Respondent testified that, through inspections or confirmations with management, there were maintenance concerns. Although Petitioner's witness estimated repair costs at \$579,000.00, sufficient evidence was not presented to support that amount. While the Board agrees that there may be a lack of maintenance, it concurs with Respondent that repairs and/or modernization probably would not be completed all at once, but more likely would be an on-going process with a separate line item account in place for reserves and replacement.

3. The Board carefully reviewed sales used by Petitioner and Respondent. The Board notes that Petitioner's sales 5 and 6 are outside the base period and were used in an effort to establish a correlation between low-rise buildings and high-rise building. The Board was not convinced a correlation was made since both were low-rise and each contained two buildings. The Board feels the use of sale 2, also a low-rise building, compared to Petitioner's sales 1, 3 and 4 would be more appropriate. The Board is convinced that sales similar in height to the subject is most appropriate. The sale at 2225 Buchtel Boulevard was used by both Petitioner and Respondent, and was given weight by the Board.

4. Regarding the adjustment for conversion from an apartment building to condominiums the Board agrees that the market would adjust, but it is not convinced that either Petitioner's or Respondent's adjustment has sufficient support.

5. Regarding the time adjustment, the Board is most convinced by Respondent's methodology, which is based on several techniques including multiple regression analysis, sales ratio analysis and apartment valuation study. However, based on the information contained on page 45 of Respondent's Exhibit 1, the Board believes that the time adjustment should be less than the 1.1% adjustment used by Respondent.

6. The Board noted discrepancies and lack of support by both Petitioner and Respondent with regard to time, age and conversion from apartment to condominium. The Board believes that an 11% adjustment for the condominium conversion is more appropriate. Based on Respondent's analysis for time, the Board believes .9% per month is appropriate based on buildings with 90+ units, and that the age adjustment should be tempered since it is a function of the overall condition. After careful consideration of all of the evidence and testimony, the Board re-calculated the adjustments based on the common sale used by both Petitioner and Respondent to derive a per unit value of approximately \$59,800.00.

7. The Board concluded that the 2001 actual value of the subject property should be reduced to \$11,700,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$11,700,000.00.

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

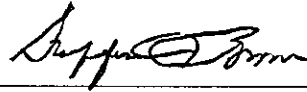
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If 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 24th day of October, 2003.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

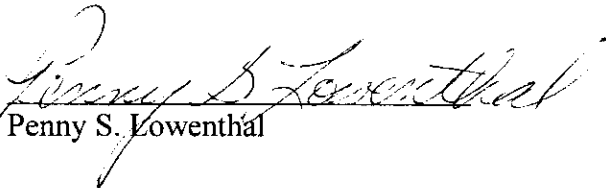


Debra A. Baumbach

This decision was put on the record

OCT 24 2003

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



Penny S. Lowenthal

