

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DERMOT PROPERTIES,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS 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 Street Denver, Colorado 80237-2038 Phone Number: (303) 759-0087 Attorney Reg. No.: 6941</p>	<p>Docket Number: 41909</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 5, 2005, Debra A. Baumbach and Steffen A. Brown presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Jennifer Wascak Leslie, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**2801 East 120th Avenue, Thornton, Colorado
(Adams County Schedule No. R0025923)**

The subject property consists of a 336-unit apartment complex located on an 18.75-acre site.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued for tax year 2003, as economic conditions, management problems, high vacancy rates and rental concessions caused a decline in value over the base period.

Respondent:

Respondent contends that the subject was correctly valued based on the market approach with supporting data from the Gross Rent Multiplier (GRM). Respondent further asserts that Petitioner's Exhibit A contains unexplained qualitative adjustments.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd J. Stevens, a Registered Appraiser with Stevens & Associates Cost Reduction Specialists, Inc., presented an indicated value of \$22,421,590.00 for the subject property based on the market approach.

2. Mr. Stevens described the subject as a garden style complex with 11 three-story apartment buildings built in 1997. It has frontage on 120th Avenue, east of Interstate 25 in Thornton, Colorado. The subject contains a total of 336 units with an average unit size of 900 square feet, which includes a 90 square foot patio. Mr. Stevens noted that the patio area should not be included, resulting in an average unit size of 810 square feet, which was confirmed by management and measuring. Amenities include a clubhouse, detached garages, swimming pool, sports court and "tot" lot. Each unit has a patio, washer/dryer hookups and a limited number of units have fireplaces. Unit mix and other building details are included in Petitioner's Exhibit A.

3. Mr. Stevens testified that the vacancy rate during the base year was 19.64% and that significant concessions such as months of free rent were being offered. Mr. Stevens also reported that the subject's location on 120th Avenue, which has high traffic and noise, caused some tenant complaints.

4. Petitioner presented four comparable sales ranging in sales price from \$20,325,000.00 to \$33,400,000.00 and in size from 222,768 and 353,104 square feet. The price per square foot of Petitioner's comparable sales ranged from \$91.24 to \$114.45 and the price per unit ranged from \$80,288.00 to \$97,826.00. After adjustments, the sales ranged from \$62.04 to \$89.92 per square foot or from \$63,986.00 to \$73,321.00 per unit.

5. Mr. Stevens described Petitioner's comparable sales as follows:

- Comparable Sale 1 was built in two phases; 1981 and 1996, with an effective age of 1991. It has a beautiful location on Parker Road in Aurora, adjacent to Cherry

Creek State Park. It is located in the Cherry Creek School District, which is a “big plus.” Vacancy at the time of sale was 5%.

- Comparable Sale 2 is newer than the subject and has a 1.63 parking ratio compared to the subject’s 1.5; however, the parking is not covered. Vacancy at the time of sale was 5%.
- Comparable Sale 3 has a good location and will be close to the Light Rail system. It has a beautiful clubhouse. The parking ratio is only .64 and the vacancy rate at the time of sale was 10%.
- Comparable Sale 4 has a panoramic view of the “Flatirons.” It has a 2.56 parking ratio and the vacancy rate was 1% at time of sale.

6. Petitioner’s witness made adjustments for time, location, age, size, economic characteristics, comparable quality and average unit area, resulting in total downward adjustments for each sale ranging from 14% to 32%. Mr. Stevens reconciled to an indicated value of \$77.55 per square foot or \$22,848,000.00 minus personal property of \$426,410.00, resulting in a final indicated value of \$22,421,590.00.

7. All of Petitioner’s sales are located outside of Adams County. The only sale within Adams County, Red Hawk Ridge, was included in Respondent’s report, but Mr. Stevens testified that he did not include this sale, as it was not an arm’s-length transaction; the buyers approached the sellers and it was not listed on the open market.

8. Mr. Stevens directed the Board’s attention to the income and expense statements for the years ending 2001 and 2002 contained in the Addenda of Petitioner’s Exhibit A. Mr. Stevens testified that the statements clearly show an increase in vacancy and rental concessions, which support the downward economic characteristic adjustments he applied to Petitioner’s comparable sales.

9. As to Respondent’s sales, Mr. Stevens testified that the sale of the Village at Legacy Ridge was an in-house transaction and that the property is located on a golf course. Mr. Dan Woodward, a Broker, confirmed that Red Hawk Ridge Apartments were not listed for sale or exposed to the market and that it was a 1031 exchange. It is also superior in construction with a maintenance-free stucco exterior. Mr. Chuck Sweeney confirmed that the buyers overpaid for Conifer Landing and that it was a 1031 exchange. The rents were high for the age of the property; it had a 4% vacancy rate and a superior location.

10. In cross-examination, Mr. Stevens’s testified that bad management of the subject property caused high vacancy and the need to offer rent concessions. He did not calculate a Gross Rent Multiplier (GRM) since it gives a skewed view and it would be based on asking rents including concessions. As to his adjustments, Mr. Stevens testified that they were his opinion after reviewing and interpreting the market and are appropriate. Mr. Stevens considered Petitioner’s Comparable Sales 1, 2 and 3 to be arm’s-length even though they were 1031 exchanges.

11. Petitioner is requesting a 2003 actual value of \$22,500,000.00 for the subject property.

12. Respondent's witness, Mr. Vernon Penton, a Certified General Appraiser with the Adams County Assessor's Office, presented an indicated value of \$33,612,625.00 for the subject property based on the market approach.

13. Respondent's witness presented three comparable sales ranging in sales price from \$16,200,000.00 to \$40,300,000.00 and in size from 208,138 to 471,947 square feet. The comparable sales ranged from \$77.78 to \$85.05 per square foot or from \$72,268.00 to \$112,054.00 per unit. After adjustments were made, the sales ranged from \$65.97 to \$153.27 per square foot or from \$81,085.00 to \$143,468.00 per unit.

14. Mr. Penton concurs with Petitioner that the net rentable area is 302,424 square feet, but disagrees as to the gross building area. The gross building area presented by Petitioner did not include the garages or carports that were rented. The subject property has 23,313 square feet of garage area and 11,000 square feet of carport area. Mr. Penton confirmed these figures with blueprints of the subject property. Mr. Penton believes that the subject has a good location with good access to Interstate 25, has views of the mountains and the pool. He noted that a premium is charged for vaulted ceilings, mountain and courtyard views. Mr. Penton testified that only four or five of the 11 buildings actually back to 120th Avenue but are separated by the garages and carports, making it very difficult to quantify a location adjustment. Mr. Penton believes that the quality of the subject is comparable to the quality of the other sales used. As to the market during the base period, Mr. Penton referred to Respondent's Rebuttal Exhibit 2, which provides a comparison of rental ads from 2001 and 2002. He testified that the starting (asking) prices for two of the three projects did not change, and therefore, he believes the market was stable. His data does not show a declining market. Mr. Penton testified that Petitioner's 2002 income and expenses could not be considered since some of the figures were outside the base year.

15. Mr. Penton testified that he helped develop the Gross Rent Multiplier (GRM) guidelines for the Division of Property Taxation (DPT) that recommends its use as a tool with other facets of the Market Approach and that it should be used whenever possible. It requires the use of potential gross annual rents since all factors such as concessions and vacancies are included.

16. Referring to Respondent's Exhibit 1, page 15, Mr. Penton described Respondent's comparable sales as follows:

- Comparable Sale 1 has a similar quality as the subject but better views, less traffic and more garages.
- Comparable Sale 2 is a larger property with superior amenities and was given most weight in his final analysis.

- Comparable Sale 3 is a vintage 1984 project but is all brick and superior in construction. It has no garages or carports and it was given the least weight in the analysis.

17. In performing his analysis, Mr. Penton used three separate grids: per square foot, per unit, and GRM. He testified that the per square foot analysis is the best indicator of value. Although Respondent assigned an actual value of \$34,192,800.00 for tax year 2003, they are recommending a reduction in value to \$33,612,625.00 based on the site-specific appraisal.

18. For additional support for Respondent's final value conclusion, Mr. Penton referred to Respondent's Exhibit 2, pages 1 through 5 wherein he applied the same adjustments used in Respondent's market approach to Petitioner's comparable sales. The end result was very close to Respondent's indicated value.

19. In cross-examination, Mr. Penton testified that he investigated the comparable located at 3850 West 112th Avenue and believes it to be a good indicator of value even though it was a turnkey transfer. The comparable at 12150 Washington Street was a 1031 exchange and was not for sale on the open market. The comparable at 243 West 80th Avenue was not given much weight. As to the GRM, Mr. Penton testified that all factors such as vacancy and rent concessions are considered in the sales price. Mr. Penton admitted that adjustments for some amenities are subjective and that he considered cost authorities and relied on his own experience as an appraiser.

20. Upon questions from the Board, Mr. Penton testified that the market was stable and showed signs of slowing, but some asking rents indicated that rental prices had gone up compared to the prior year.

21. Respondent is recommended a reduction in actual value to \$33,612,625.00 for tax year 2003.

22. In rebuttal, Mr. Stevens testified that, according to the corporate owners in New York, the vacancy rate was 19.6% as of June 30, 2002, which indicated an internal problem because the comparable sales show a 1% to 5% vacancy rate.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2003.

2. Petitioner and Respondent presented sales with unadjusted values ranging from \$80,288.00 to \$112,054.00 per unit. However, Respondent believed the best indicator of value was based on a per square foot analysis. The Board agrees with Petitioner that a per unit analysis is more typical of the market, as opposed to analysis on a square foot basis.

3. Of the seven sales presented by Petitioner and Respondent, six were either 1031 exchanges or in-house transactions. While both parties believed their sales to be arm's-length, the Board was not given sufficient information to make that determination since a 1031 exchange considers exchanges of equity and an in-house transfer may be a change in name only. In addition, neither party agreed on a mutual comparable sale.

4. The Board carefully examined each sale on its own merit to provide an adequate indicator of the appropriate value for the subject based on a price per unit. The Board was convinced that Petitioner's Comparable Sale 1 and Respondent's Comparable Sale 2 were most similar to the subject in the number of units, unit mix, average unit size, site size and overall comparability. The Board recalculated the value of the subject property using the unadjusted per unit prices of \$80,288.00 (Petitioner's Comparable Sale 1) and \$104,167.00 (Respondent's Comparable Sale 2) and applied adjustments as set forth below:

- **Time:** Petitioner and Respondent disagree as to the strength of the market during the base period. Petitioner testified the market declined approximately $-.5\%$ during the base period and Respondent cited a market increase of $+5\%$ per month based on statistics over the past five years. However, Respondent testified that the market was stable and showed no signs of slowing and Petitioner presented a negative time adjustment based on a difference in value from the beginning to the end of the base period. Neither party presented information extracted from market sales transactions to support their time adjustments. The Board was convinced that no time adjustment should be applied.
- **Location:** Petitioner did not present sufficient data to convince the Board that a location adjustment was warranted. Respondent testified that all locations were average; the Board concurred and made no adjustment for location.
- **Age:** Both parties agreed that an adjustment for age was appropriate. The Board finds that 1% per year is an appropriate adjustment for this type of property, therefore, a $+6\%$ adjustment was applied to Petitioner's Comparable Sale 1 and a -2% adjustment was applied to Respondent's Comparable Sale 2.
- **Project Size:** The Board agrees with Petitioner that the market recognizes project size and that larger apartment complexes typically sell for less per unit than smaller complexes. The Board applied a $+5\%$ adjustment to Petitioner's Comparable Sale 1 and a $+1\%$ adjustment to Respondent's Comparable Sale 2.
- **Unit Area:** The parties adjusted for differences in unit area using very dissimilar methods. The Board carefully reviewed the unit mix of the comparable sales and did not find conclusive evidence to support an adjustment for unit area.
- **Complex Quality and Amenities:** The Board applied a combined adjustment for quality and extra amenities such as garages, carports and other facilities. Petitioner's Comparable Sale 1 was adjusted $+2\%$ and Respondent's Sale 2 was adjusted -10% .

- **Personal Property:** The Board deducted \$300,000.00 from Respondent's Comparable Sale 2 for personal property.
- **Economic Characteristics:** The Board disagrees with Petitioner's assertion that Economic Characteristics is a recognized category of adjustment in the sales comparison approach. Income information may not be considered, as only the market approach may be considered for the subject property. An adjustment based on a comparison of GRM would be allowed, but no analysis was presented. Therefore, no adjustment for economic characteristics was applied.

5. The net adjustment applied to Petitioner's Comparable Sale 1 was +13% to arrive at an indicated value of \$90,725.00 per unit. The net adjustment applied to Respondent's Comparable Sale 2 was -11% for an indicated value of \$92,708.00 per unit. The Board concluded to an indicated value for the subject property of \$91,700.00 per unit or \$30,800,000.00.

6. Based on all of the evidence and testimony presented, the Board determined that the 2003 actual value of the subject property should be reduced to \$30,800,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$30,800,000.00.

The Adams 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 8th day of February 2005.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Steffen A. Brown

Steffen A. Brown

This decision was put on the record

FEB 08 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

