BOARD OF ASSESSMENT APPEALS, **STATE OF COLORADO** 1313 Sherman Street, Room 315 Denver, Colorado 80203 ______________________________ Petitioner: **DERMOT PROPERTIES,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	
Attorney for the Petitioner: Name: William A. McLain, Esq. Address: 3962 S. Olive Street Denver, Colorado 80237 Phone Number: (303) 759-0387 Attorney Reg. No.: 6941	**Docket Number: 43039**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 17, 2004, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Maria Kayser, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

3255-3257 S. Parker Road, Denver, Colorado
Denver County Schedule Number 06354-00-019-000

Petitioner is protesting the 2003 actual value of the subject property, consisting of a 336-unit apartment complex on an 8.28-acre site.

ISSUES:

Petitioner:

Petitioner contends that market conditions at the end of the base period, particularly economic changes following the 9/11 terrorist attacks, were not accurately reflected in the 2003 assigned value. Petitioner contends that adverse market conditions, including high vacancy rate for the subject and higher rent concessions, caused a decline in value over the base period.

Respondent:

Respondent contends that the 1998 sale of subject property can be used as an indicator of value. Respondent further contends that Petitioner's selection of sales comparables is flawed and that Respondent used more appropriate sales. Additionally, Respondent contends that market conditions indicate upward adjustments for time for those sales chosen by the Respondent, including the 1998 sale of the subject.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd J. Stevens of Stevens & Associates Cost Reduction Specialists, Inc., presented the following indicator of value, supported in Petitioner's Exhibit A:

Market: $16,000,000.00

2. Mr. Stevens presented photographs of the subject property, showing what he believed to be extensive water damage throughout the property, including cracked interior ceilings and exterior walls, and damage to balconies, skylights and the parking garage. At the time of sale, maintenance was required on elevator pistons and shafts. Photos also revealed that unit interiors were dated, with original fixtures, cabinets and countertops. Mr. Stevens noted problems with noise for some of the units proximate to Interstate 225 and difficult ingress and egress due to high traffic volume on Parker Road and shared access with two fast food restaurants.

3. Mr. Stevens reported that the value of the subject declined between the 1998 date of sale and June 30, 2002. His opinion was based on an increase in vacancy rates and rent concessions of one to three months' free rent on new leases.

4. Petitioner's primary support for a downward time adjustment is the increase in the subject's Vacancy Loss and Rent Concessions as shown on Profit and Loss (P&L) statements included in the addenda of Petitioner's Exhibit A. These schedules indicate that as of December 31, 2000, vacancy loss and rental concessions totaled $258,275.70. As of December 31, 2002, vacancy loss and rental concessions increased to $767,737.48, representing an increase of 197 percent.

5. Mr. Stevens reported that when the subject was purchased, it was 100 percent occupied. In 2000, rental concessions were offered; however, vacancies still increased. At the same time, rental rates reportedly declined.

6. As further evidence, Petitioner's witness provided information from the *U.S. Housing Market Profiles* for Denver-Boulder, Colorado for the second quarter 2002. Mr. Stevens noted the following excerpt:

> "As units started in 2000 and 2001 began to enter the market, the renter vacancy rate, as reported in a vacancy study done for the Apartment Association of Metro Denver, climbed from the 4- to 5-percent range typical of the late 1990s to almost 9 percent by the fourth quarter of 2001. In the first and second quarters of 2002, the vacancy rate hovered at 9 percent, but renter vacancies are unlikely to have peaked with nearly 9,000 apartments still under construction. The second half of 2002 will see continued softening and double-digit vacancy rates."

7. Mr. Stevens provided four sales comparables, with dates of sale ranging from March 2000 to July 2001. Petitioner's comparable sales indicated per unit prices ranging from $48,214.00 to $62,815.00 prior to adjustment. Mr. Stevens adjusted each of the comparable sales downward by 8 to 22 percent to reflect increasing vacancy rates and rental concessions.

8. Respondent's witness, Lawrence M. Delsart, a Certified General Appraiser with the Denver County Assessor's Office, presented Exhibit 1A, an appraisal of the subject property concluding to an indicated value of $29,000,000 for tax year 2003. Mr. Delsart observed problems with traffic and noticed the proximity of I-225 to the subject; however, he did not feel that I-225 created a negative impact. The description of the subject property shown on page 7 of Respondent's Exhibit 1A was based on information contained in a brochure. He was not aware of the maintenance issues presented by the Petitioner.

9. Mr. Delsart also relied on the market approach to value the subject. He placed primary emphasis on properties that were mid-rise units similar to the subject with interior hallways and elevators. Secondary emphasis was placed on properties that sold within the base period; and finally, to properties that were proximate to the subject. Mr. Delsart testified that older sales of mid-rise properties were more credible than more recent sales of low-rise units.

10. Mr. Delsart presented four comparable sales, including the 1998 sale of the subject, on which he placed the greatest reliance. Respondent's Comparable Sales 1 through 3 were adjusted upward by 16 to 28 percent for time. Respondent's time adjustment was primarily based on mass appraisal information, which was not presented to the Board. Respondent's Exhibit 1, a CoStar Comps report that indicated an increase in average price per unit sold between January 1, 1998 and December 31, 2000, was presented in support of Respondent's time adjustment. Respondent's Exhibit 1 also showed an increase from $51.62 to $65.31 in the price per square foot of units sold or an average price increase of 1.1 percent per month. Respondent's Exhibit 2 indicates that the median price per square foot increased from $71.28 during the first six months of 2001 to $76.34 per square foot during the first six months of 2002, representing a gain of 7.1 percent for that period.

11. Both the Petitioner and the Respondent included the July 2001 sale of the Overlook at 3031-3166 W. 14th Avenue as a comparable property (Comparable Sale No. 4 in both reports.) However, adjustments to this sale varied significantly.

12. Mr. Stevens applied a downward time adjustment of 6 percent to Comparable Sale No. 4 to reflect a decline in value between the date of sale and the end of the base period. He made a1 percent adjustment for age, believed to be 1 year based on CoStar information. Mr. Stevens considers Sale 4 inferior to the subject in amenities and parking, and made an upward adjustment of 10 percent. He made an upward adjustment of 5 percent to account for the larger number of units included in the Overlook. Because Sale 4 was only 9 percent vacant at the time of sale, compared to the subject's 17 percent vacancy rate, Mr. Stevens made a downward adjustment of 10 percent for superior economic characteristics. Mr. Stevens testified that he made a downward adjustment for location, as the Overlook is superior to the subject due to panoramic views, quiet setting and easy access to the Central Business District.

13. Mr. Delsart testified that he believed the Overlook was completed in 1966 based on Assessor's card information. He had made upward adjustments to Sale 4 for inferior age and features. On a per square foot basis, Mr. Delsart applied a negative 10 percent adjustment for unit size; whereas on a per unit basis, he applied a positive 20 percent adjustment. Mr. Delsart testified that the location of the Overlook is inferior compared to the subject.

Petitioner's and Respondent's adjustments to Comparable Sale 4, the Overlook, are summarized on the following Table:

Adjustments to Comparable Sale 4 – The Overlook

	Petitioner's A (Page 36) $/Unit	Respondent's A1 (Page 16) $/sf Analysis	Respondent's A1 (Page 17) $/Unit
Total Sale Price Less Personal Property	$62,815	$77	$62,515
Time Adjustment	-6%	0%	0%
Effective Age	1%	6%	6%
Features/complex Quality	10%	15%	15%
Unit Size	0%	-10%	20%
Scale of Property	5%	5%	5%
Economic Characteristics	-10%	0%	0%
Locational Differences	-15%	10%	10%
Additional Adjustments	0%	0%	0%
Total Adjustments	-15%	26%	56%
Value Indication	$53,393	$98	$97,524

14. Petitioner is requesting a 2003 actual value of $16,000,000.00 for the subject property.

15. Respondent assigned an actual value of $28,560,000.00 to the subject property for tax year 2003.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. While no properties identical to the subject sold during the base period, the Board was convinced that adequate sales were available within the eighteen-month period. . The Petitioner presented three sales that occurred within the base period with unadjusted values ranging from $49,768.00 to $62,815.00 on a per unit basis. The Board was convinced that analysis on a per unit basis is more typical of the market, as opposed to analysis on a square foot basis.

3. The Board was also convinced that Respondent's use of the 1998 sale of the subject as the primary indicator of value was in error for the following reasons:

(a) The sale occurred outside the eighteen-month base period.

(b) Respondent failed to show adequate support for the significant upward adjustment for time that was made to the sale of the subject.

(c) The subject experienced significant economic changes between the 1998 sale and the end of the base period, as evidenced by the increase in vacancy from 0 to 17 percent and a significant increase in vacancy loss and concessions as shown on the P&L statements.

4. Both parties agreed that the July 2001 sale of the Overlook, identified as Comparable Sale 4 by both parties, represents a reasonable comparable sale for their analysis of the subject's value. However, the parties disagreed as to the appropriate adjustments. Additionally, information provided by the Respondent showed discrepancies in adjustments made for unit size.

5. The Board is convinced that an appropriate analysis of the sale of the Overlook provides an adequate indicator of the appropriate value of the subject.

6. Based on the evidence and testimony presented, the Board re-calculated the value of the subject property using the following adjustments:

Time Adjustment: Respondent and Petitioner agreed on a minimal time adjustment for Sale 4 ranging from 0 to minus 6 percent. Petitioner presented a negative time adjustment based on vacancy rates and rent concession changes at the subject property, as well as general market trends for these two characteristics. However, no market-extracted information from sales transactions was presented to support the effect, if any, that these two characteristics had on the overall market value of the subject. In contrast, Respondent presented information based on a sales Trend Report issued by CoStar Comps as well as mass appraisal studies to support an upward market trend, though Mr. Delsart chose not to apply a market trend factor. As only the market approach to value can be considered for the subject property, the Board is convinced that no time adjustment factor should be applied.

Effective Age: Conflicting information was presented regarding the age of Sale 4:

Respondent indicated a completion date of 1966 based on Assessor's card information and Petitioner indicated a completion date of 1978 based on CoStar information. Respondent's information was more convincing, as it clearly indicated an inspection date of July 11, 1967. The Board utilized Respondent's adjustment of 6 percent for age.

Features/Complex Quality: The Petitioner indicated that the Overlook has inferior amenities and parking and applied a 10 percent upward adjustment. The Respondent applied an upward adjustment of 15 percent for inferior features. The Board finds that a 10 percent adjustment is warranted for inferior amenities and parking.

Unit Size: Petitioner made no adjustment for unit size. While the average unit size of Sale 4 is smaller than the subject's, the availability of 3 bedroom units and townhomes makes Sale 4 equal to the subject overall for unit size. Respondent's witness suggested a conflicting adjustment to Sale 4 for unit size, ranging from a downward adjustment per square foot of 10 percent to an upward adjustment per unit of 20 percent. Based on conclusive evidence presented by the Petitioner, the Board made no adjustment for unit size.

Scale of Property: The Board concurs with both the Petitioner and the Respondent that a positive 5 percent adjustment is appropriate.

Economic Characteristics: Mr. Stevens' adjustment under a heading of economic characteristics is not a recognized category of adjustment in the sales comparison approach. For ad valorem purposes, income information may not be considered, as only the market approach may be considered for residential properties such as the subject. An adjustment based on a comparison of gross rent multipliers would be allowable, but no analysis was presented. Therefore no adjustment for economic characteristics was given.

Location: Evidence and testimony presented suggests that, compared to the subject, the Overlook has offsetting positive and negative locational factors; therefore, the Board made no location adjustment.

Personal Property: The Board deducted personal property from the sales price of Comparable 4, as reported by the Respondent.

A summary of the Board's adjustments to Comparable 4 is presented in the following table:

	Final Adjustments
Sales Price Per Unit Less Personal Property	$62,515
Time Adjustment	0%
Effective Age	6%
Features/complex Quality	10%
Unit Size	0%
Scale of Property	5%
Economic Characteristics	0%
Locational Differences	0%
Additional Adjustments	0%
Total Adjustments	21%
Value Indication Per Unit	$75643

7. Based on the evidence and testimony presented, the Board concluded that the 2003 actual value of the subject property should be reduced to $25,416,048.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $25,416,048.00.

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 13th day of October 2004.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Sondra W. Mercier

This decision was put on the record

OCT 1 3 2004

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

Penny S. Lowenthal

STATE OF COLORADO
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BOARD OF ASSESSMENT APPEALS

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