

06-0637
Property Tax/Locally Assessed
Signed 04/24/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	06-0637
)		
v.	)	Parcel Nos.	#####-1; #####-2
	)		#####-3; #####-4
BOARD OF EQUALIZATION	)		#####-5
OF SALT LAKE COUNTY,	)	Tax Type:	Property Tax/Locally Assessed
STATE OF UTAH,	)	Tax Year:	2005
)		
Respondent.	)	Judge:	Chapman

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2
 PETITIONER REPRESENTATIVE 3
For Respondent: RESPONDENT REPRESENTATIVE, from the Salt Lake County Assessor's
 Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on April 11, 2007. At issue is the 2005 fair market value of the five subject properties, which the Salt Lake County Board of Equalization ("County BOE") assessed as follows:

Parcel No.	County BOE Value
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$

#####-3	\$\$\$\$
#####-4	\$\$\$\$
#####-5	\$\$\$\$

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission”

Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

Description and Highest and Best Use. The subject properties are five of the eight parcels that comprise the APARTMENTS, which are located at ADDRESS in Salt Lake County. The eight parcels that comprise the apartment complex contain 5.02 acres and have 88 two-bedroom, one-bath apartments. The apartment complex also contains carports, an office building with a laundry area, and two storage warehouses. The apartments are located in eight separate buildings, each containing eight or twelve apartments. All of the complex’s apartments were built in the 1970’s.

The Petitioner, however, has only appealed five of the parcels, which contain 64 of the 88 apartments. The Petitioner did not appeal the following three parcels associated with the complex:

Parcel No.	Acreage	Improvements
#####-6	0.61	Office, laundry, two storage structures
#####-7	0.03	No structures
#####-8	1.05	Two twelve-unit apartment buildings

Based on the testimony and evidence proffered at the Initial Hearing, the Commission finds that the highest and best use of the five parcels under appeal are as part of the eight-parcel apartment complex (i.e., the economic unit), not as separate parcels.

Assessed Value of the Economic Unit. The County's appraiser proffered an appraisal in which she determined a value for the economic unit of \$\$\$\$\$. From this appraised value, the County determined that each of the five parcels under appeal was underassessed. However, the appraisal does not include the value at which the economic unit was assessed as a whole. Nor did it include the assessed values of the three parcels that were not appealed. As a result, the appraisal did not show whether the 2005 assessed value of the economic unit was higher or lower than the appraisal value. The appraiser also stated that she did not have this information available at the hearing. Without this information, however, the Commission would be unable to determine whether the County's appraised value was higher or lower than the 2005 assessed value of the economic unit.

For this reason, the Commission ordered the appraiser to provide post-hearing information to show the 2005 values at which the three parcels not under appeal were assessed. The appraiser provided

computer printouts for each of these parcels.¹ The printouts appear to be incomplete because some of the amounts that appear on the printouts are missing. However, the appraiser circled an amount on the printout for each parcel, which the Commission will assume was intended to represent the parcel's assessed value. For example, for Parcel No. #####-8, one of the parcels not under appeal, the appraiser indicated (i.e., circled) that its 2005 assessed value was the amount shown in the "Sel Val" line of the printout. The Commission notes that the "Pri Totl Value" amount is missing from the printout. The Commission also notes that for the five parcels under appeal, their assessed values are equal to the "Pri Totl Value" lines shown on similar County printouts, which in each case was slightly higher than "Sel Val" amount shown on their printouts.

Nevertheless, the Commission will accept these amounts without evidence to the contrary. Using the information provided by the County appraiser, the assessed value for the apartment complex for the 2005 tax year is \$\$\$\$\$, as follows:

Parcel No.	Under Appeal (Yes/No)	Current Assessed Value
#####-1	Yes	\$\$\$\$\$
#####-2	Yes	\$\$\$\$\$
#####-3	Yes	\$\$\$\$\$
#####-4	Yes	\$\$\$\$\$
#####-5	Yes	\$\$\$\$\$
#####-6	No	\$\$\$\$\$
#####-7	No	\$\$\$\$\$
#####-8	No	<u>\$\$\$\$\$</u> \$\$\$\$\$

At \$\$\$\$\$, the 88-unit apartment complex is currently assessed at approximately \$\$\$\$\$ per unit.

1 On the cover sheet of the fax that accompanied the printouts, the appraiser included a statement discounting certain information that the Petitioner proffered at the hearing. The appraiser stated that "[a]ny adjustment for condition, (roof repairs) should be supported by a bid or estimate for repairs." This is ex parte communication that should not be submitted outside the hearing process, because the Petitioner was not given an opportunity to respond to it. As a result, the Commission will not consider the statement for purposes of this decision.

Petitioner's Information. PETITIONER REPRESENTATIVE 1, the owner of the apartment complex, indicated that in 2004 he received an unsolicited bid to purchase the apartment complex for \$\$\$\$\$, which he turned down. He also stated that because of the condition issues surrounding the apartment complex as of the lien date, January 1, 2005, he believed that its value as an economic unit was between \$\$\$\$\$ and \$\$\$\$\$ for the 2005 tax year. Based on this information, it would appear the current 2005 assessed value for the apartment complex is slightly low.

Nevertheless, the Petitioner asks the Commission to reduce the values of the five parcels that he appealed, on the basis of three apartment complex sales that sold at prices from \$\$\$\$\$ to \$\$\$\$\$ per unit, prices less than the \$\$\$\$\$ per unit at which the subject complex is currently assessed. The Petitioner believes an adjustment is reasonable because the buildings on the five parcels he appealed need new roofs and because the subject complex's apartments have never been remodeled and still have their original green and yellow fixtures and appliances.

The Petitioner's comparable sales are not persuasive, however, as they all appear to be in inferior locations to the subject. Furthermore, there was no information available concerning the comparables' conditions at the time of sale to know if they were, in fact, similar in condition to the subject. Based on the testimony and evidence proffered by the Petitioner only, the Commission would conclude that the subject apartment complex should be valued somewhere between \$\$\$\$\$ and \$\$\$\$\$.

County Appraisal. The County has submitted an appraisal in which it estimates the value of the apartment complex to be \$\$\$\$\$. The County's appraisal contains two approaches to value: 1) the sales approach, which indicates a value of \$\$\$\$\$; and 2) the income approach, which indicates a value of \$\$\$\$\$. The appraiser gave each approach 50% weight in correlating a final value of \$\$\$\$\$, which equates to approximately \$\$\$\$\$ per unit for the 88-unit complex. The Petitioner explained that she gave the market

approach a weight of 50% because in her experience, apartment complexes were selling in 2005 for prices that were higher than the value that which could be supported by an income approach alone.

Sales Approach. The Commission does not find the County's sales approach persuasive. First, the four comparables that the County used all appear superior to the subject complex. Two of the comparables were built in the 1980's, and the Petitioner proffered information showing that such complexes received higher rents than those built in the 1970's. In addition, County records show that all four comparables have good interior conditions, while the subject's condition is only average. Furthermore, the apartments in three of the four comparables were significantly larger in size than the subject's apartments. Lastly, not only did the appraiser have no information of whether any of the comparables had been remodeled, but the pictures provided in the appraisal suggest that all four comparables are located in surroundings that may be more appealing than the subject's. Had the County included some inferior comparables in its approach as well, thereby "bracketing" the comparables sales, perhaps the approach would have been more persuasive.

Income Approach. For its income approach, the County used the subject's actual rents, subtracted a stabilized vacancy of 7%, added miscellaneous income of 2%, subtracted market expenses and a 3% reserves expense, applied an %%% capitalization rate to the NOI, and subtracted short-term rent loss of 2%. With this formula, the appraiser determined an income approach value of \$\$\$\$ for the subject complex.

The income approach appears reasonable. The Petitioner claimed, however, that he did not receive \$\$\$\$ per month of miscellaneous income that the County had assumed he would receive from laundry room revenue and late rent penalties. The Petitioner explained that each apartment has a washer and dryer hook-up and as a result, the apartment complex only has three washers and dryers available for tenant use. PETITIONER REPRESENTATIVE 1 estimates that he only receives "a couple of hundred dollars" a month of

laundry revenues. However, the Petitioner did not have any information concerning the amount of income received from late rent penalties. The County stated that when it estimated miscellaneous income, it did not know that all apartments had their own hook-ups. As a result, the appraiser’s estimate of miscellaneous income may be slightly overstated.

Nevertheless, even if the miscellaneous income were reduced from \$\$\$\$ to \$\$\$\$ a month, the income approach would show a value of \$\$\$\$\$, the amount the Petitioner was offered for the complex in 2004 and the lower end of his estimate of value for the 2005 tax year. From the totality of the evidence and testimony proffered, the Commission finds that the fair market value of the subject apartment complex is \$\$\$\$ for the 2005 tax year, which equates to approximately \$\$\$\$ per unit for the 88-unit complex.

Apportionment of the Increase in Value. The \$\$\$\$ value determined above is approximately \$\$\$\$ higher than the economic unit’s current 2005 assessed value of \$\$\$\$\$. Apportioning the additional \$\$\$\$ in value among the 88 apartments results in an increase of \$\$\$\$ per unit. When the apartments located on each parcel are increased \$\$\$\$ per unit, the increase in value for each parcel is calculated as follows:

Parcel No.	Under Appeal	Number of Units	Current Assessed Value	Increase (No. of Units X \$1,725)	Commission Value
#####-1	Yes	16	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-2	Yes	12	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-3	Yes	12	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-4	Yes	12	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-5	Yes	12	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-6	No	0	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-7	No	0	\$\$\$\$	+ \$\$\$\$\$	= \$\$\$\$\$
#####-8	No	<u>24</u>	<u>\$\$\$\$</u>	+ <u>\$\$\$\$</u>	= <u>\$\$\$\$</u>
		88	\$\$\$\$	\$\$\$\$	\$\$\$\$

The Commission will increase the value of the five parcels under appeal to the values shown above. As shown by the above calculation, Parcel No. #####-8, which is not under appeal, is also

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underassessed. However, because neither party appealed this parcel, the Commission will neither increase its value by \$\$\$\$ nor apportion the \$\$\$\$ increase among the five parcels that are under appeal.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the 2005 fair market value of the five properties under appeal should be increased from the value established by the County BOE to the value established by the Commission, as follows:

Parcel No.	County BOE Value	Commission Value
#####-1	\$\$\$\$	\$\$\$\$
#####-2	\$\$\$\$	\$\$\$\$
#####-3	\$\$\$\$	\$\$\$\$
#####-4	\$\$\$\$	\$\$\$\$
#####-5	\$\$\$\$	\$\$\$\$

The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

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Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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