

12-1010
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 2-26-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1010 Parcel No. 1-##### 2-##### Tax Type: Property Tax / Locally Assessed Tax Year: 2011 Judge: Chapman
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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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process.

Pursuant to Utah Admin. Rule R861-1A-37(7), 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: TAXPAYER, Taxpayer
For Respondent: RESPONDENT, 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 January 23, 2013.

At issue is the fair market value of two condominium FACILITIES as of the January 1, 2011 lien date.

The subject properties are located at ADDRESS in CITY-1, Utah. The Salt Lake County Board of

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Equalization (“County BOE”) reduced the \$\$\$\$ value at which each of the subject properties was originally assessed for the 2011 tax year to \$\$\$\$\$. The taxpayer asks the Commission to reduce the value of each of the subject properties to \$\$\$\$\$. For each of the subject properties, the County asks the Commission to sustain its current value of \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.”

UCA §59-2-102(12) defines “fair market value” to mean “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.”

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(1) Any 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. . . .

....

(4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:

- (a) the issue of equalization of property values is raised; and
- (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

....

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 contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah*

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Power & Light Co. v. Utah State Tax Comm'n, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject properties are units at a FACILITY that has been converted into condominiums so that each unit is individually owned. The complex in which the subject properties are located consists of ##### units (##### buildings with ##### units each). The taxpayer contends that the all of the units in the subjects' complex are identical except in two or three instances where the owners have combined two units by removing the wall between them. The taxpayer and the County agree that it is rare for a FACILITY to be divided into separate condominiums. Other than the subjects' complex, the parties are aware of only one other FACILITY in Salt Lake County where the units are separated into condominiums. The other complex is located in CITY-2.

The two subject units are identical in size. The taxpayer claims that each unit has dimensions of 25' by 11½', which would equate to each unit being 287.5 square feet in size. County records, however, show that each of the subject units has dimensions of 26' by 12', which equates to each unit being 312 square feet in size. Regardless of which dimensions are more correct, each unit is approximately 300 square feet in size.

Taxpayer's Information. The taxpayer proffers a number of reasons in support of a value of \$\$\$\$\$ for each subject unit. First, the taxpayer proffered a sale of a unit in the subjects' complex, which sold for \$\$\$\$\$ in December 2010. The taxpayer provided several documents, including a Salt Lake County Assessor Survey, showing that NAME-1 purchased a unit identical to the subject units from NAME-2 District ("District") for \$\$\$\$\$ several weeks prior to the lien date.

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Second, the taxpayer explained that units in the subjects' complex rarely sell. He further explained that once he and several other owners became aware of the December 2010 sale, they appealed their 2011 valuations because all of their units had been assessed at \$\$\$\$\$. The taxpayer claims that of the seven units that he and his co-owners appealed (i.e., his two units and the other owners' five units), the County BOE reduced the fair market value of his two units to \$\$\$\$\$ and the fair market value of the other five units to \$\$\$\$\$. The taxpayer believes that it is only equitable that his two units also be reduced to \$\$\$\$\$ per unit.

Third, the taxpayer provided the County records for one of the condominium units in the CITY-2 FACILITY that was mentioned earlier. County records show the CITY-2 unit to be the same size as the subject units. The CITY-2 unit was assessed at \$\$\$\$\$ for the 2011 tax year and \$\$\$\$\$ for the 2012 tax year. The taxpayer contends that the CITY-2 unit is more valuable than the subject units because properties in CITY-2 are generally more expensive than properties in CITY-1. The taxpayer stated that two months ago (November 2012), he called the CITY-2 facility and was told that 10 units were available. He states that he was told that they were listing the units at \$\$\$\$\$ per unit and that they would take \$\$\$\$\$ per unit. The taxpayer further states that he recently called again and was told that all of the units had sold but one and that the list price of the remaining unit was now \$\$\$\$\$.

Fourth, the taxpayer stated that a website located at WEB ADDRESS estimates that one of the #####-unit buildings in the subjects' complex has a value of \$\$\$\$\$, which equates to \$\$\$\$\$ per unit (\$\$\$\$\$ divided by ##### units). The taxpayer, however, did not provide documentation to show when he obtained this value from the website. Furthermore, this information seems unreliable because it is estimating a single value for ##### individually-owned properties.

For these reasons, the taxpayer asks the Commission to reduce the value of each of the subject units to \$\$\$\$\$.

County Information. The County admits that FACILITIES, like the subject units, would probably sell on the basis of the sales comparison approach. However, because there are very few sales of such units, the County states that it has resorted to an income approach in an attempt to value the subject units. (Prior to the December 2010 sale, the County states that the last sale in the subjects' complex that it knows of was a 2005 sale).

The County based its income approach on the rates being charged at FACILITIES that are not separated into condominiums (i.e., complexes where a single entity owns and leases all of the units located in the complex). The lease rates used by the County were the rates in effect on January 1, 2012, one year after the January 1, 2011 lien date. The County's comparables leased at rates ranging between \$\$\$\$ and \$\$\$\$ per square foot. The County used the average of these six lease rates, specifically \$\$\$\$ per square foot, as the rental rate in its income approach. The County also used a vacancy rate of 15%, an expense rate of 25%, and a capitalization rate of 9.5% to arrive at an income approach value of \$\$\$\$.

The County also contends that the \$\$\$\$ value currently on each subject property equates to approximately \$\$\$\$ per square foot, while the taxpayer's proposed value of \$\$\$\$ equate to approximately \$\$\$\$ per square foot. The County claims that FACILITIES do not sell for \$\$\$\$ per square. However, the County provided no comparables to show the prices at which FACILITIES sell. In addition, it provided no information that would show whether such FACILITY comparables would be similar to and sell at the same prices as condominium units in a FACILITY.

Finally, the County asks the Commission to give the December 2010 sale of the unit in the subjects' complex for \$\$\$\$ little or no weight. The County indicates that it could not find where the District listed the property for sale. The County believes that the unit that sold may have been "surplus property" that the District was disposing of. Without more information, the County believes that the district may have auctioned the unit. It contends that such a sale would be distressed and would have likely sold below its fair market

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value. The County, however, admits that it does not know if the property sold at auction and does not know how the purchaser found out that the unit was for sale. (The taxpayer states that the District put a “For Sale” sign on the unit).

For these reasons, the County asks the Commission to sustain the \$\$\$\$ value that is currently assessed to each of the subject units.

Analysis. The County’s income approach is not particularly convincing. First, the County admits that the subject units probably would not sell on the basis of the income approach. Second, the lease rates the County used were for the 2012 lien date, not the 2011 lien date. Third, it is unclear whether the subject’s lease rate would be at the low end, high end, or in the middle of the lease rate range. If the lowest rate is substituted into the County’s income approach, the approach would support a value near the taxpayer’s proposed value. Fourth, the components the County used in its income approach were obtained from information concerning FACILITIES where all units are owned and operated by the same owner. It is unclear whether this information is applicable for condominium units like the subject properties.

Although the County’s evidence is not very convincing, the County does not have a burden to show that the subject units’ current values are correct. The burden is upon the taxpayer to show that the current values are incorrect. The taxpayer has provided sufficient evidence to meet this burden. First, the December 2010 sale of a unit in the subjects’ complex is the first sale of a unit there in a number of years. The County admits that the sales comparison approach is the best method to estimate the subjects’ values. Furthermore, the County’s assertion that the District sold the unit as surplus property is insufficient evidence to show that the sale was distressed or that the sales price was below fair market value. Second, the County BOE lowered the values of five identical units in the subjects’ complex to \$\$\$\$ for the 2011 tax year. Although some owners did not contest the original valuations of \$\$\$\$ per unit, it would be equitable to reduce the subject units’

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values to the \$\$\$\$ value at which five identical units were lowered. For these reasons, the value of each of the subject units should be reduced to \$\$\$\$ for the 2011 tax year.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission reduces the value of each of the two subject properties to \$\$\$\$\$ for the 2011 tax year. 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 taxpayer'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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner