

03-1497
Locally Assessed Property
Signed 11/01/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND FINAL DECISION
)
Petitioner,) Appeal No. 03-1497
) Parcel No. Multiple-3
v.)
) Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION)
OF IRON COUNTY,) Tax Year: 2003
STATE OF UTAH,)
) Judge: Davis
Respondent.)

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2, MAI
For Respondent: RESPONDENT REPRESENTATIVE 1, Iron County Assessor
 RESPONDENT REPRESENTATIVE 2, Deputy, Iron County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 22, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The year in question is 2003, with a lien date of January 1, 2003.
3. The Iron County Assessor originally valued the subject property at \$\$\$\$\$ as of the

lien date in question. Upon appeal to the Iron County Board of Equalization, a value of \$\$\$\$ was determined.

4. The subject property is a low-income government subsidized housing project consisting of ##### units. The project contains ##### one-bedroom units and ##### two-bedroom units.

5. When the project was constructed, the owners entered into an agreement with the federal government which provided low cost financing in exchange for Petitioner agreeing to accept restricted rents for a period of 30 years from the low income tenants. The authorized rents for 2002 were \$\$\$\$ per month for the one-bedroom units, and \$\$\$\$ per month for the two-bedroom units. In addition, there were federal income tax credits provided to the developers over a 10 year period. The project was originally constructed in 1990, and the tax credits have now all been used and are now expired. There are no further tax credits remaining on the project.

6. Petitioner presented a limited appraisal report prepared by PETITIONER REPRESENTATIVE 2, MAI, and a Utah State-Certified General Appraiser. PETITIONER REPRESENTATIVE 2 testified that a cost approach would not be a reliable indicator of value for a government subsidized housing project, and he also testified that there were no comparable sales of low income housing units within a reasonable vicinity that could be used for a comparable sales approach. Therefore, PETITIONER REPRESENTATIVE 2 prepared his limited appraisal report based only upon the direct capitalization income approach.

7. In PETITIONER REPRESENTATIVE 2's direct capitalization approach, he began

with the actual rents of \$\$\$\$ per month for one-bedroom units, and \$\$\$\$ per month for two-bedroom units, deducted a 5% vacancy allowance, added on other income of \$\$\$\$ consisting of late fees, laundry and vending income, deducted operating expenses of \$\$\$\$ per unit, and then capitalized the income at a rate of %%. Based upon that approach, PETITIONER REPRESENTATIVE 2 gave his opinion of value as \$\$\$\$.

8. PETITIONER REPRESENTATIVE 2's capitalization rate of %% was calculated from six separate comparable sales in the area between CITY 1, STATE and CITY 2, Utah. Based upon those comparable sales, he estimated the O.A.R. at %%, and used %% to arrive at his estimated value.

9. PETITIONER REPRESENTATIVE 2 also used a vacancy and collection loss of %% in his income approach. As of the lien date, there were no vacancies, but the testimony was that because of the changes in income level each year, there are people who no longer qualify and therefore move out, which requires a short vacancy period before new tenants can move in. Therefore, there are always some vacancy losses throughout a year, and there are also some collection losses from bad checks or people who cannot meet the rent requirements. Accordingly, the Commission finds that a vacancy and collection loss of %% is reasonable. There was no other testimony that any other rate would be more reasonable.

10. Respondent did not present an appraisal which was supported by an opinion of value from a licensed appraiser. Instead, RESPONDENT REPRESENTATIVE 2, a licensed appraiser, did present a method which she proposed should be used to determine the fair market

value of the property, but she did not present an opinion of value which complied with USPAP.

11. The position of RESPONDENT REPRESENTATIVE 2 was that the favorable financing available for government subsidized housing projects has a direct correlation to the income generated by the property. Therefore, she made a different type of income approach by taking the estimated gross income of the company, deducting the actual expenses, and adding back the property taxes to arrive at the net operating income. She then constructed a band of investment in which she applied a %%% return to what she calculated as the equity position and a %%% return to what she calculated as the debt portion. She then added an effective tax rate of %%%, and arrived at an operating return of %%% which she rounded to %%. Based upon a rate of return of %, and a net operating income of \$\$\$\$\$, she arrived at an indicated value of \$\$\$\$\$. That value was substantially below the value determined by the Board of Equalization.

13. Petitioner presented rebuttal testimony from PETITIONER REPRESENTATIVE 2 in which he stated that using the band of investment method to determine a capitalization rate for the income approach, as was presented by Respondent, does not determine a market value for the property, but instead determines the value of the mortgage. He further testified that if you are going to use a band of investment method, then you should separate the value of the property from the value of the mortgage. Respondent did not rebut those assertions.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *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).

Utah Code Ann. §59-2-102 as enacted by the 2003 Utah State Legislature and effective as of January 1, 2004, contains the following definition:

- (17) "Intangible property" means:
 - (a) property that is capable of private ownership separate from tangible property including:

.....

- (x) patents; or
- (b) a low-income housing tax credit.
- (18) "Low-income housing tax credit" means:
 - (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code; or
 - (b) a low-income housing tax credit under:
 - (i) Section 59-7-607; or
 - (ii) Section 59-10-129.

Utah Code Ann. §59-2-301.3, also enacted by the 2003 Utah State Legislature, but effective January 1, 2003 states as follows:

- (1) As used in this section:
 - (a) "low-income housing covenant" means an agreement:
 - (i) between:
 - (A) the Utah Housing Corporation; and
 - (B) an owner of real property upon which residential housing is located; and
 - (ii) in which the owner described in Subsection (1)(a)(i)(B) agrees to limit the amount of rent that a renter may be charged for the residential housing; and
 - (b) "residential housing" means housing that:
 - (i) is used:
 - (A) for residential purposes; and
 - (B) as a primary residence; and
 - (ii) is rental property.

(2) In assessing the fair market value of real property that is subject to a low-income housing covenant, a county assessor shall include as part of the assessment any effects the low-income housing covenant may have on the fair market value of the real property.

The Utah State Tax Commission has adopted Utah Administrative Code Rule R884-24P-67 to implement the 2003 legislation, and that Rule provides in relevant part:

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

....

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D.1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

- a) operating statement;
- b) rent rolls; and
- c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information under D.

DISCUSSION

The first issue that must be decided is whether the value determined by Respondent is entitled to a presumption of correctness. In this proceeding, the Board of Equalization determined the value of the subject property was \$\$\$\$\$. The testimony presented by Respondent at the hearing presented a value of \$\$\$\$\$, substantially less than the value determined by the Board of Equalization.

The principle of giving the presumption of correctness to the value initially established by the government agency has been well-established for many years, and was first

enunciated by the Utah Supreme Court in Utah Power & Light v. Utah State Tax Commission, 590

P.2d 332 (Utah 1979). In that case, the Utah Supreme Court stated:

"The fundamental proposition is that the purpose of such a proceeding is to determine what should be the fair, reasonable and proper valuation and assessment. It is not to be doubted that the Commission must have a sound evidentiary basis for its decision. Concomitantly, where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation."

The Utah Supreme Court further elaborated on that principle in Utah Railway Company v. Utah State Tax Commission, 5 P.3d 652 (Utah 2000), when the Court stated as follows:

"[T]he Commission argues that the original valuation is entitled to a "presumption of correctness". We agree that such a presumption is necessarily implied by our holding in *Utah Power & Light Co.* That presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission.

In this case, because the Division is in the best position to present the evidence supporting its valuation, and because we think it unfair to impose upon the taxpayer an obligation to ensure that the record includes a property valuation the taxpayer contests, we hold that the Division is the entity obligated to do so.

....

Where a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Once that is done, the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment," and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation." *Utah Power & Light Co.*, 590 P.2d at 335. (Emphasis added).

The Commission does not interpret the decisions of the Utah Supreme Court to mean

that the County or the State must present an appraisal that determines the value of the subject property to be exactly the value determined by the Board of Equalization. Modest changes or corrections are common, especially where later information permits a more precise determination of value. Nevertheless, where a change of substantial magnitude is made at the hearing when compared with the value determined by the Board of Equalization, the County or the State no longer have that presumption of correctness, and the case must then be decided based upon which party presents, by a preponderance of the evidence, the most correct estimate of fair market value. Therefore, the Commission determines that in this case the Respondent is not entitled to a presumption of correctness of its values.

Petitioner presented an appraisal which is based upon a very common methodology using a direct capitalization income approach. Respondent did not substantially challenge the method or calculations used by Petitioner in its limited appraisal report. Notwithstanding that, the Commission does have a concern regarding the capitalization rate of %%%% used by Petitioner. That rate was calculated from six separate comparable sales, none of which were government subsidized low-income housing units. Nevertheless, notwithstanding that concern, there was no evidence which supported a better capitalization rate than that used by Petitioner's appraiser. Therefore, in the absence of better evidence, the Commission accepts the capitalization rate of %%%% as being reasonable in this case.

Respondent did use a smaller capitalization rate and a larger net operating income than did the appraiser for Petitioner. However, the appraiser for Respondent testified that the band

of investment approach used by Respondent was a method of valuing the mortgage, and was not an appropriate method to use for determining the fair market value of the property. Respondent did not successfully rebut that assertion. Accordingly, a preponderance of the evidence indicates that the valuation methodology proposed by Respondent is not an accepted method for determining the fair market value of property. Therefore, based upon the evidence presented by the parties, the Commission finds that the proposed method of valuing the property presented by Respondent does not accurately determine the fair market value of the property in this matter. Accordingly, the Commission finds the best evidence of value presented in this proceeding is the value determined and presented by Petitioner's appraiser in his limited appraisal report.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2003 is \$\$\$\$\$. The Iron County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2004.

G. Blaine Davis
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 _____, 2004.

Appeal No. 03-1497

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Appeal No. 03-1497

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

GBD/ssw/03-1497.fof