

04-0185
Locally Assessed Property Tax
Signed 07/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioner,)	
v.)) Appeal No. 04-0185
)) Parcel Nos. ##### through #####
BOARD OF EQUALIZATION)	
OF UINTAH COUNTY,)) Tax Type: Property Tax/Locally Assessed
STATE OF UTAH,)) Tax Year: 2003
)	
Respondent.)) Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Representative
 PETITIONER REPRESENTATIVE 2, Representative
 PETITIONER REPRESENTATIVE 3, Appraiser

For Respondent: RESPONDENT REPRESENTATIVE, Deputy Uintah County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 8, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the 44 subject properties that was set by Respondent for property tax purposes.
2. The tax year is 2003, with a lien date of January 1, 2003.
3. The subject property consists of 44 units and is identified as parcel numbers #####

through #####. The 44 units comprise the entirety of the (X) project located in CITY, Utah and were built in 1981. The project consists of approximately 3.507 acres of land improved with #####, (X) buildings, for a total of 44 units. Each of the 44 subject properties is a (X) with 1,152 square feet, three bedrooms and one-and-a-half baths. Each unit also has a small, fenced yard and off-street parking.

4. The Petitioner owns all 44 units of the (X) project and has operated the project as an apartment complex since it was built in 1981. In 03-0027, a case dealing with the 2002 tax year, the Commission found the highest and best use of the property was as an apartment complex.

5. The Petitioner presented an appraisal (Exhibit P-1) prepared by PETITIONER REPRESENTATIVE 3, a certified general appraiser, in which he appraised the 44 subject properties. PETITIONER REPRESENTATIVE 3 determined that the units, when appraised together as an apartment complex, had a value of \$\$\$\$\$ as of April 3, 2003.

6. PETITIONER REPRESENTATIVE 3 has been an appraiser for ten years. He went to the property as part of preparing the appraisal for COMPANY. The appraisal was done for a loan. He used the cost approach, the sales comparison approach, and the income approach using market rents.

7. PETITIONER REPRESENTATIVE 3 observed a problem with the siding. He treated it as a deferred maintenance or age condition adjustment. He did not have an estimate of the cost to repair the siding problem. However, his opinion of value, taking the siding problem into consideration, was \$\$\$\$\$.

8. Petitioner submitted an estimate for repair of the siding of \$\$\$\$\$.

9. Petitioner submitted an analysis using the income approach. Petitioner's income approach used actual rents (approximately \$\$\$\$\$ per month), rather than market rents (\$\$\$\$\$ per month). Petitioner's income approach stated a vacancy and collection loss of 16%. PETITIONER REPRESENTATIVE 3's appraisal used 8%. Petitioner's income approach listed operating expenses of 37% and reserves of 3%. PETITIONER REPRESENTATIVE 3's appraisal listed total expenses of %%%%.
of %%%%.

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. 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).

CONCLUSIONS OF LAW

PETITIONER REPRESENTATIVE 3, one of Petitioner's witnesses, is a certified general appraiser with ten years of experience. He used three approaches to value. Each supported his conclusion that the value of the subject property is \$\$\$\$\$. His appraisal was accepted by the Commission as a valid assessment of the subject property's value in a hearing held for the 2002 tax

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year involving the same parties. See 03-0027. The value assigned by the Respondent to the subject property through its Board of Equalization was \$\$\$\$ per unit, or \$\$\$\$ for all 44 units. This is essentially the same value found by PETITIONER REPRESENTATIVE 3 in his appraisal.

The PETITIONER REPRESENTATIVE 3 appraisal, rather than demonstrating an error in the County's assessment of the property, supports it. Rather than providing a sound evidentiary basis for reducing the original evaluation, it sustains the original evaluation.

Petitioner's additional evidence was not prepared by a certified appraiser. It used what were represented as actual rents, for example, as opposed to market rents. It used only the income approach. It is not as persuasive as PETITIONER REPRESENTATIVE 3's appraisal. It does not rise to the level of demonstrating an error in the County's assessment, nor does it provide a sound evidentiary basis for reducing the original evaluation.

Following the Petitioner's case, the Respondent rested without presenting any evidence. Petitioner then sought to offer rebuttal evidence. Rebuttal evidence is:

Evidence given to explain, repel, counteract, or disprove facts given in evidence by the adverse party. That which tends to explain or contradict or disprove evidence offered by the adverse party. Layton v. State, 261 Ind. 251, 301 N.E. 2d 633, 636. Evidence which is offered by a party after he has rested his case and after the opponent has rested in order to contradict the opponent's evidence.

Black's Law Dictionary, Fifth Edition, page 1139.

The Respondent objected on the grounds it had offered no evidence, therefore, there was no evidence to rebut. The objection was sustained.

Prior to the hearing Respondent filed a Motion to Dismiss. The basis of the Motion to

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Dismiss was that Respondent had not received the evidence Petitioner intended to introduce at least ten days prior to the hearing. The Motion was heard and denied at the beginning of the hearing. Respondent again objected in the hearing when Petitioner sought to introduce in its case in chief what was marked as Petitioner's Exhibit Three for identification. A ruling on the objection was reserved. Petitioner made no further effort to introduce Exhibit Three.

Evidence not provided to an opposing party ten days prior to a hearing is subject to exclusion from the proponents case in chief. However, rebuttal evidence need not be provided to the opposing party prior to the hearing. It appears Petitioner made a tactical decision, anticipating Respondent would introduce evidence, thus allowing Petitioner to introduce its evidence free from an objection based on failure to provide it ten days prior to the hearing. Respondent did not introduce evidence in its case in chief. This prevented introduction of the evidence as rebuttal.

The Commission notes that this was not merely confusion on the part of the taxpayer. Had the Petitioner made a mistake in the order of presentation of the case, and had the evidence for the case in chief been submitted timely, the Commission may well have admitted the additional evidence.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds the market value of the (X) project is \$\$\$\$\$, or \$\$\$\$\$ for each of the 44 units, as of the lien date. It is so ordered.

DATED this _____ day of _____, 2005.

R. Spencer Robinson

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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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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.

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