

04-0446
Locally Assessed Property
Signed 02/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
)	
Petitioner,)	Appeal No. 04-0446
)	
v.)	Parcel No. #####
)	Tax Type: Property Tax /
BOARD OF EQUALIZATION OF)	Locally Assessed
SALT LAKE COUNTY, UTAH,)	Tax Year: 2003
)	
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 Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, 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 June 16, 2004.

Petitioner is appealing the fair market value of the subject property for 2003 property tax purposes, with a lien date of January 1, 2003. The subject property is a 24-unit apartment complex that is identified as Parcel No. ##### and is located at ADDRESS in CITY, Utah. The County Assessor originally assessed the property at \$\$\$\$\$, a value sustained by the County BOE. This value equates to approximately \$\$\$\$\$ per apartment unit.

The subject property consists of six separate buildings containing a total of 24 units on 0.79 acres and is known as the COMPLEX 1. The buildings are block construction and two stories in height. The property contains two studio units; eight one-bedroom, one-bath units; 12 two-bedroom, one-bath units; and two two-bedroom, two-bath units. The average unit size is approximately 908 square feet and the property has covered parking for 20 cars.

The Petitioner is requesting that the fair market value be reduced to \$\$\$\$\$, or \$\$\$\$\$ per unit. The County is requesting that the value be increased to \$\$\$\$\$, or approximately \$\$\$\$\$ per unit, based on an income approach it has developed.

Included in the information provided by the Petitioner is the operating statement for the property for the most current year, which showed a net operating income (“NOI”) of \$\$\$\$\$. The Petitioner explained that the operating expenses for this property, close to 40% of total EGI, are likely higher than those of many apartment complexes because the landlord pays for all or a majority of tenant utilities. In addition, the vacancy rate for the property is approximately 33% (as shown on a January 2003 rent roll) and the owner has recently lowered rents in an attempt to increase occupancy. The

comparable sales provided by the Petitioner sold at values ranging from \$\$\$\$ per unit to \$\$\$\$ per unit.

To support its request that the subject property's assessed value be increased to \$\$\$\$\$, the County proffers an income approach it has developed using the subject property's actual rent rolls, a 10% vacancy rate obtained from an EquiMark Properties survey, a \$\$\$\$ per unit expense deduction, a 3% reserves expense deduction, and a total capitalization rate of %%% (%% cap rate plus %%% effective property tax rate). However, actual vacancy was 33% as of the lien date (and as far back as September 30, 2001, as indicated by the taxpayer's rent rolls) and the "excess" vacancy was not addressed in the County's income approach. In addition, the Petitioner's actual rent rolls show that one of the units is supplied to the apartment manager rent-free. Accordingly, this management "expense" should either be deducted from the PGI or considered an additional expense, if actual rents and expenses are being used. Altering the County's income approach to account for these factors (deducting the potential rent revenue of the manager's apartment and assuming a temporary rent loss of six months for the extra 23% of vacancy) results in a value for the property of approximately \$\$\$\$\$, a value less than 1% greater than the assessed value. Accordingly, the Commission is not convinced by the County's income approach that the property is underassessed

The County, however, provided sufficient information to refute the Petitioner's capitalization rate comparables. In addition, the Petitioner's representative stated that she bought the cap rate comparables and did not know how they were calculated. For this reason, the Commission believes that a %%% capitalization rate

(prior to loading the property tax rate) appears reasonable for the subject property based on the information provided at the hearing. If the Commission uses the Petitioner's actual 2002 PGI (as reported on its operating statement), stabilizes vacancy at 10%, uses the Petitioner's actual expenses, capitalizes the resulting NOI at %%%%, and deducts six months excess vacancy rent loss, such an income approach shows a value of approximately \$\$\$\$\$. If a 3% reserves expense is also deducted, the value drops to approximately \$\$\$\$\$. There is insufficient information to know if the Petitioner's actual expenses included expenses for capital expenditures or for property taxes. The subject property's assessed value falls within the \$\$\$\$\$ to \$\$\$\$\$ range of values derived from actual rents and expenses. Accordingly, the property's assessed value appears reasonable based on an income approach derived from the information available.

As mentioned earlier, the Petitioner presented several comparable sales that sold from \$\$\$\$\$ per unit to \$\$\$\$\$ per unit. The subject is currently assessed at \$\$\$\$\$ per unit. The County offered five comparable sales that sold from \$\$\$\$\$ per unit to \$\$\$\$\$ per unit. Interestingly, one of the Petitioner's comparable sales (COMPLEX 2, which sold for \$\$\$\$\$ per unit on October 20, 2001) pertains to a property that subsequently sold in 2003 for \$\$\$\$\$ per unit. Also interesting is that, from the comparables the parties submitted, there only appear to be two ranges of values for apartment buildings, one that ranges from \$\$\$\$\$ to \$\$\$\$\$ per unit and one that ranges from \$\$\$\$\$ to \$\$\$\$\$ per unit. Although the subject property is not currently assessed in either range, its assessment is near the lower range of values, which may be appropriate given its vacancy problems. However, insufficient information is available not only about the subject property, but also the comparable sales properties, to know which

comparables are most like the subject. Nevertheless, the income approach to value tends to support the assessed value and, based on the information provided at the hearing, the Commission does not find that the evidence and testimony proffered indicate the assessed value to be incorrect.

APPLICABLE LAW

All 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 provide by law. Utah Code Ann. Sec. 59-2-103 (1).

“Fair market value” means 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. Utah Code Ann. 59-2-102(12).

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 by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. (Utah Code Ann. Sec. 59-2-1006(1)).

To prevail in a real property tax dispute, 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).

DISCUSSION

Both parties submit information that calls into question the assessed value of the subject property. However, the information provided tends to support the assessed value instead of either showing the value to be too high or too low. Accordingly, the Commission sustains the assessed value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's appeal and sustains the County BOE's finding that the subject property's assessed value for the 2003 tax year is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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, UT 84134

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

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 04-0446

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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

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