

04-0447
Locally Assessed Property Tax
Signed 04/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	Appeal No. 04-0447
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel Nos: #####-1 & #####-2
SALT LAKE COUNTY,)	
STATE OF UTAH,)	Tax Year: 2003
)	Judge: Davis
Respondent.)	

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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Attorney

RESPONDENT REPRESENTATIVE 2, Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 29, 2005. Subsequent to the hearing and prior the issuance of this decision, the Administrative Law Judge who heard the case for the Commission retired. Based upon the notes from the Administrative Law Judge and evidence presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien date January 1,

2003.

2. The subject property consists of two adjacent parcels, parcel nos. #####-1 and #####-2. The property is located at ADDRESS 1, CITY, Utah.

3 The County Assessor had originally set the value of the subject property for the lien date at \$\$\$\$ for parcel #####-2 and at \$\$\$\$ for parcel no. #####-1. This results in a combined value of \$\$\$\$.

The County Board of Equalization sustained the values for both parcels.

4. The subject parcels combined consist of .41 acres and are improved with a 21-unit apartment complex. The complex was built in 1973 and is in average condition. It has a brick exterior and 15,900 rentable square feet. There are twelve 1 bedroom units at 650 square feet and nine 2-bedroom units with 900 square feet.

5. Petitioner submitted some valuation information that had been compiled by PETITIONER REPRESENTATIVE. PETITIONER REPRESENTATIVE is not an appraiser. PETITIONER REPRESENTATIVE submitted an income approach and a sales comparison approach. It was her conclusion that the value for the subject property should be reduced to a combined value of \$\$\$\$.

6. In the income approach, PETITIONER REPRESENTATIVE calculated the value using the actual rental income and a market rental income. For the actual income PETITIONER REPRESENTATIVE calculated the income from the January 2003 rent rolls. It was her conclusion using the actual rental income and no vacancy the effective gross income was \$\$\$\$\$. Recognizing that actual rents were lower than market, PETITIONER REPRESENTATIVE also prepared an income approach using what she considered to be market rates. These were \$\$\$\$ for the one-bedroom units and \$\$\$\$ for the two bedroom units that were rental averages from an EquiMark published report. Using the market rates she also applied a market vacancy factor of 10%. Under this calculation the effective gross income was \$\$\$\$\$. Under both approaches she deducted expenses of \$\$\$\$ per unit, a 3% reserve and a %%% capitalization rate. The expenses also

came from an EquiMark report. Her conclusion using the actual income was that the value for the property was \$\$\$\$\$ and using the market income approach the value was \$\$\$\$\$.

7. PETITIONER REPRESENTATIVE also considered five comparable sales. These apartment complexes ranges from 6 to 37 units and had sold for prices per unit ranging from \$\$\$\$\$ to \$\$\$\$\$. However, her comparable number five, which had sold for \$\$\$\$\$ per unit had small units of only 453 square foot average and was a low-income housing project. This was not a good comparable for the subject. Additionally her comparable no. 4, located at ADDRESS 2, was only a six unit complex and not comparable. Her first three comparables were more similar to the subject in physical characteristics although not necessary in a comparable location. However, the first two comparables had sold considerably prior to the lien date, in 2001, for \$\$\$\$\$ per unit and \$\$\$\$\$ per unit respectively. Respondent points out that these two comparables had both resold after the lien date for significantly higher amounts, \$\$\$\$\$ per unit in 2004 and \$\$\$\$\$ per unit in May 2003 respectively. PETITIONER REPRESENTATIVE'S comparable no. 3 had sold in March 2003 for \$\$\$\$\$ per unit and resold in May 2004 for \$\$\$\$\$ per unit. It was PETITIONER REPRESENTATIVE'S conclusion that the sales indicated a value for the subject property of \$\$\$\$\$ per unit, or a total value of \$\$\$\$\$.

8. Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE 2, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE 2's conclusion that the value of the subject property as of the lien date at issue was \$\$\$\$\$. He considered both a sales and an income approach to determine the value of the subject property.

9. In his sales approach he considered four properties, all located within a reasonable proximity to the subject property. These apartment complexes had sold for prices per unit ranging from \$\$\$\$\$ to \$\$\$\$\$ per unit. Three of the four comparable properties were comprised of all, or all but one 2-bedroom units. In comparison the subject has twelve one-bedroom units and nine two-bedroom units. All of RESPONDENT REPRESENTATIVE 2's sales occurred after the lien date with two occurring in 2004 and two in 2003.

RESPONDENT REPRESENTATIVE 2's comparable no. 2, located at ADDRESS 3 was the same property as PETITIONER REPRESENTATIVE'S comparable no. 2. However, RESPONDENT REPRESENTATIVE 2 had consider in his appraisal the 2003 sale at \$\$\$\$\$ per unit and PETITIONER REPRESENTATIVE had consider the 2001 sale at \$\$\$\$\$ per unit. From the sales it was RESPONDENT REPRESENTATIVE 2's conclusion that the comparables indicated a value for the subject of approximately \$\$\$\$\$ per unit, or a value of \$\$\$\$\$. He also did a calculation based on the price per square foot of the comparables that resulted in a similar value.

10. In addition to the sales approach, RESPONDENT REPRESENTATIVE 2 also considered an income approach. The rent rates he used were \$\$\$\$\$ for the 1-bedroom unit and \$\$\$\$\$ for the 2-bedroom unit. He indicates that these rental rates came from EquiMark as reported by a square foot basis. PETITIONER REPRESENTATIVE had relied on the data reported on a per unit basis. Additionally RESPONDENT REPRESENTATIVE 2 added 4% of the PGI as "Misc Income." However, there was no evidence that petitioner received any other income beside the rental income. The other factors relied on were a 10% vacancy rate, expenses of \$\$\$\$\$ per unit, reserves of 3%, capitalization rate loaded for taxes of %%%%% to conclude that the value for the subject property was \$\$\$\$\$. This equates to a value per unit of \$\$\$\$\$.

11. In analyzing the information presented in this matter, there are three sales comparables offered which were nearest to the lien date at issue. Petitioner's comparable no. 3, at ADDRESS 4, had sold in March 2003 for \$\$\$\$\$ per unit. This comparable is a considerable distance from the subject property. Respondent's comparable no. 2, at ADDRESS 3, had sold in May 2003 for \$\$\$\$\$ per unit and Respondent's adjusted value from this comparable for the subject was \$\$\$\$\$. Respondent's comparable no. 4, at ADDRESS 5 had sold April 2003 for a price of \$\$\$\$\$ per unit and respondent's adjusted value from this comparable for the subject was \$\$\$\$\$. This comparable was the nearest in location to the subject, but was a smaller complex with only 12 apartment units. This presents to the Commission a wide range of values, and the Commission notes that

the value set by County Board of Equalization is within this range.

12. Upon analysis of the parties' income approaches, and the other information presented, there is evidence to contradict Respondent's rental income and expenses. The Commission notes from the actual rents, average per unit rents from Equimark and from the rents indicated in the sales comparables in RESPONDENT REPRESENTATIVE 2's appraisal, his rents appear higher than market. Additionally his expenses appear lower than market based on the Equimark report and the expenses indicated in the information on his sales comparables. RESPONDENT REPRESENTATIVE 2 argued in his appraisal that the Equimark expenses were for professionally managed, higher end, small complexes, so the expenses would not be as high for the subject. However, the Commission notes in the detail information from RESPONDENT REPRESENTATIVE 2' sales comparables the expenses supported the \$\$\$\$ per unit reported by Equimark and used by PETITIONER REPRESENTATIVE in her income valuation. The Commission finds that RESPONDENT REPRESENTATIVE 2 has supported his capitalization rate and it appears reasonable. If the value is calculated using the corrected market rents and expenses it would equal a value of \$\$\$\$\$, which supports the value set by the County Board of Equalization.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "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. For purposes of taxation, "fair market value" shall be determined

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using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. (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 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. . . (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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

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). In this matter Respondent is requesting a higher value while Petitioner is requesting a value lower than that set by the County Board of Equalization. There are comparables that support both requests as well as the Board of Equalization value which is in the middle. When correct rents and expenses are used in the income approach, the resulting value also supports the Board of Equalization's decision. The parties have not presented sufficient evidence to lower or raise the Board of Equalization value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the values set by the County Board of Equalization for the parcels at issue as of January 1, 2003. It is so ordered.

DATED this _____ day of _____, 2006.

Jane Phan
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 _____, 2006.

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.