

04-0450 & 04-0452
Locally Assessed Property Tax
Signed 01/17/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	Appeal Nos. 04-0450 & 04-0452
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel Nos: #####-1, #####-2
SALT LAKE COUNTY,)	#####-3
STATE OF UTAH,)	Tax Year: 2003
)	Judge: Phan
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:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 6, 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 subject property for the lien date January 1, 2003.

2. The subject property consists of three adjacent parcels, parcel nos. #####-1 (“Parcel 001”), #####-2 (“Parcel 002”) and #####-3 (“Parcel 003”). The combined property is located at ADDRESS, CITY, Utah and is commonly referred to as the (X). The total assessed value for all three parcels was \$\$\$\$\$. The County Board of Equalization sustained the value. The individual parcels were valued by the County as follows:

Parcel 1	\$\$\$\$\$
Parcel 2	\$\$\$\$\$
Parcel 3	\$\$\$\$\$

3. The parcels combined are .73 of an acre and used as a unit. They are improved with a 21-unit apartment complex. Twelve of the apartment units are in one building and nine units are a second building. In total there are twelve units with one-bedroom and one-bathroom and nine units with two-bedroom and one-bathroom. The apartments were built in 1960 and 1972. They were in average condition and average grade. There are also carports on the property for the tenants to park their vehicles.

4. Petitioner owns numerous other apartment complexes in the general area of the subject and manages them all as one large 291-unit apartment complex. For this reason actual expenses are combined with all his other properties and not available for the subject complex. Petitioner did submit the actual rent roll for the subject property. PETITIONER REPRESENTATIVE who represented Petitioner in this matter had compiled valuation information regarding this property. PETITIONER REPRESENTATIVE stated that she was not a licensed appraiser and did not personally receive compensation for her role in the appeal. It was her opinion based on the information that the actual rents were lower than market rents. The typical actual rent for the one-bedroom units appears to be \$\$\$\$\$ per month. Market rent for the one bedroom would be closer to \$\$\$\$\$. Similarly the two-bedroom units were typically leased for below market rents. PETITIONER

REPRESENTATIVE stated that it was Petitioner's strategy to keep the rents lower in order to maintain higher occupancy rates and avoid concessions. As of the lien date the vacancy rate for the subject was only 4.76%.

5. PETITIONER REPRESENTATIVE presented both an income and sales approach. In the income approach she relied on what she concluded to be market rent and market vacancy rates. In addition she subtracted market expenses of \$\$\$\$ per unit, plus 3% reserves and a capitalization rate of %%%%. The resulting value was \$\$\$\$\$. She supported her expenses, cap rate and vacancy rate with published information from EquiMark and a Cap Rate report that COMPANY had purchased.

6. PETITIONER REPRESENTATIVE also submitted seven comparable sales. They had sold for prices per unit ranging from \$\$\$\$ to \$\$\$\$\$. Her sales comparables nos. 1 through 3 were fairly similar to both the number of units and location. The Commission finds comparable 4 to be so dissimilar as to not provide any probative evidence of value for the subject. Comparable nos. 5, 6 and 7 were in different neighborhoods, with comparable 6, which was also the lowest priced sale, being in a significantly inferior neighborhood. Comparables 5 and 7 are in a neighborhood that may be comparable to the subject property. PETITIONER REPRESENTATIVE made appraisal type adjustments to the comparables and because she is not a licensed appraiser these are not given the weight of an appraisal. However, considering the unadjusted sale price per units the comparables support a value per unit in the \$\$\$\$ to \$\$\$\$ range.

7. RESPONDENT REPRESENTATIVE, Certified General Appraiser, and employee of the Salt Lake County Assessor's Office prepared an appraisal in this matter in which she concluded that the combined value for all three parcels was \$\$\$\$\$. This value is higher than the value set by the County Board of Equalization. In the appraisal she included a cost, income and sales approach to value. In her income approach she relied on the market rent, but used a lower than market vacancy rate, pointing the fact that the rate for the subject was less than 5%. However, the subject's vacancy was low, due in part to the fact that the

actual rent charges were lower than market. It is inconsistent to combine the higher market rent with a lower actual vacancy. If this error alone was corrected in the appraisal the value from the income approach would be reduced from \$\$\$\$\$ to \$\$\$\$\$. The Commission would note that this value is close to the County's original assessed value.

8. In the appraisal, RESPONDENT REPRESENTATIVE also presented four comparables to support her capitalization rate of %%%%. The Commission notes that the two highest rates at %%%% and %%%% occurred during 2002. The remaining two sales indicated lower rates, but the sales occurred in 2003, after the lien date. This may indicate a stronger market in 2003, but for the lien date at issue the Commission must value the property as of January 1, 2003. She also indicates in the appraisal that the typical cap rate for apartment properties for the year-end 2002 was from %%%% to %%%% according to EquiMark.¹ However, PETITIONER REPRESENTATIVE had submitted an EquiMark Properties study that indicated the average "Cap Rate" during 2002 was actually %%%%, as well as capitalization rate comparables. The evidence submitted does not indicate a rate lower than the average of %%%% for the lien date at issue. If this is corrected in RESPONDENT REPRESENTATIVE'S appraisal, along with the vacancy, the value from the income approach would be reduced to approximately \$\$\$\$\$.

9. RESPONDENT REPRESENTATIVE also considered a sales approach. In this she looked at the prices per square foot of the comparables as the unit of comparison rather than the price per unit. The price per square foot of the units sold ranged from \$\$\$\$\$ to \$\$\$\$\$. These type of properties rent and sell more by the unit than on a per square foot basis. Even RESPONDENT REPRESENTATIVE acknowledged that a renter would not necessary notice a difference of less than 100 square feet in an apartment. The average unit sizes of her comparables were fairly similar to the average unit size of the subject. If calculated on a price per

¹ See RESPONDENT REPRESENTATIVE'S Appraisal, pg. 37.

unit, her comparables ranged from \$\$\$\$ per unit to \$\$\$\$ per unit. PETITIONER REPRESENTATIVE'S three best comparables indicated an unadjusted price per unit from \$\$\$\$ to \$\$\$\$\$, within the range of RESPONDENT REPRESENTATIVE'S comparables. The Commission notes that RESPONDENT REPRESENTATIVE'S price per square foot calculation of \$\$\$\$ results in a value per unit of \$\$\$\$ for the subject, higher than any per unit price of any comparable offered in this matter. Additionally the average unit size of RESPONDENT REPRESENTATIVE'S comparables bracket the subject with two being smaller units and two larger units. After reviewing the comparable sales it is the Commission's conclusion that the value for the subject would be around the \$\$\$\$ to \$\$\$\$ per unit range. This results in a value range of \$\$\$\$ to \$\$\$\$ and is supportive of the corrected income approach.

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 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 has an equal burden of proof to raise the value, as Petitioner has to lower the value. Considering the burden of proof and the evidence submitted in this matter a lower value was supported for this property at \$\$\$\$\$.

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 County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2006.

Appeal Nos. 04-0450 & 04-0452

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.

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