

04-0454
Locally Assessed Property Tax
Signed 06/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal No. 04-0454
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel No #####
SALT LAKE COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	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. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:
 Jane Phan, Administrative Law Judge

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 2, 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 market value of the subject property as set by Respondent for

property tax purposes.

2. The lien date at issue is January 1, 2003.

3. The subject property is parcel number ##### and is located at ADDRESS, CITY, Utah.

4. The Salt Lake County's Assessor's Office had originally valued the subject property for the lien date at issue at \$\$\$\$\$. The County Board of Equalization reduced the value to \$\$\$\$\$.

5. The subject property is .66 of an acre improved with an eighteen-unit apartment complex. The apartments were constructed in 1964 in three separate, two-story brick buildings of average construction. All of the apartment units are two-bedroom, one-bath units. The average unit size is 814 square feet. In addition there are carports with covered parking.

6. Petitioner's representative, PETITIONER REPRESENTATIVE, submitted valuation information in this matter. She is not a licensed appraiser. She prepared both an income approach to value and a market sales approach. In her sales approach she presented five comparables. They had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per unit. Two of the comparables, numbers 1 and 3 were similar as far as location and had sold for \$\$\$\$\$ per unit and \$\$\$\$\$ per unit respectively. However, comparable 3 which had sold for the lower amount was an apartment complex with 30 units, while the subject has only 18. The remainder were not in the same area. There were also some dissimilarities concerning the number of units, size of units, land size and age. PETITIONER REPRESENTATIVE made appraisal type adjustments for the differences and it was her conclusion that the sales indicated a price per unit for the subject at \$\$\$\$\$. This equates to a value of \$\$\$\$\$ for the entire property. As PETITIONER REPRESENTATIVE is not an appraiser the Commission does not give the adjusted value the weight it would give an appraisal.

7. For the income approach, PETITIONER REPRESENTATIVE relied on the actual rental income received for the property in January 2003 annualized. Three of the units were vacant at that time which resulted in a 17% vacancy rate. She testified that actual expense information was not available due to the fact

that the owner combines expenses with a number of other apartment complexes. The expense rate used by PETITIONER REPRESENTATIVE was \$\$\$\$ per unit and was based on an Equimark report. This amount included taxes, but the report states reserves were not included. For this reason PETITIONER REPRESENTATIVE subtracted an additional 3% for reserves. Her net income was \$\$\$\$\$, which she capitalized by %%%%. This resulted in a value of \$\$\$\$ for the subject property, or \$\$\$\$ per unit.

8. Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE, Registered Appraiser. RESPONDENT REPRESENTATIVE concluded that the value of the subject property was \$\$\$\$ or \$\$\$\$ per unit. This value is slightly higher than that set by the County Board of Equalization. In his appraisal he considered both an income and sales comparison approach.

9. In the sales approach RESPONDENT REPRESENTATIVE considered four comparables, two of which were in a reasonable proximity to the subject. The sales had sold for values from \$\$\$\$ to \$\$\$\$ per unit. His comparables 1 and 2 were the properties most similar in location and had sold for \$\$\$\$ per unit and \$\$\$\$ per unit respectively. He made appraisal adjustments and concluded that the comparables indicated a range for the subject property from \$\$\$\$ per unit to \$\$\$\$ per unit. He gave various weighting to the comparables based on appraisal judgment and concluded that the sales approach value for the subject was \$\$\$\$ per unit or \$\$\$\$\$. The adjusted values from the two compares located in the most similar area to the subject property were \$\$\$\$ and \$\$\$\$ per unit. The Commission notes that both these comparable apartment complexes had only twelve units compared to the eighteen units of the subject and they were somewhat newer, both factors tend to indicate that the value for the subject would be lower than the sale of these two comparables. In addition all of his comparables appeared to be superior to the subject as the indicated values were all lower than the actual sale prices per unit.

10. In the income approach RESPONDENT REPRESENTATIVE concluded that the value of the subject property was \$\$\$\$\$. He used a rent per unit of \$\$\$\$ that was supported by the actual rate. He used a

market vacancy rate of 10% which was a reasonable rate and lower than PETITIONER REPRESENTATIVE'S vacancy rate of 17%. One significant difference between the two income approaches was RESPONDENT REPRESENTATIVE'S addition of \$\$\$\$ for other, non-rent, income. He indicated that on average apartment complexes collected an additional 4% income from laundry and vending, late charges and fees, forfeited deposits and utility reimbursements and provided comparables for non-rent income. For his operating expenses he used \$\$\$\$ per unit. He did not include tax in this and instead added tax in the capitalization rate. PETITIONER REPRESENTATIVE had used expenses of \$\$\$\$ per unit that included tax and added an additional 3% for reserves. The capitalization rate used by RESPONDENT REPRESENTATIVE was %%%%. He supported this number by sales which all occurred after the lien date. He acknowledged that the rates had been going down at this time and states that he adjusted up somewhat to account for this difference. His comparables indicated rates of %%%%, %%%% and %%%%. He then added %%%% for the effective tax rate, increasing the rate to %%%%.

11. Petitioner's representative presented some rebuttal evidence that RESPONDENT REPRESENTATIVE'S first comparable actually had much larger units than RESPONDENT REPRESENTATIVE had indicated. The MLS information indicated the building had 18,719 square feet and PETITIONER REPRESENTATIVE concluded this would indicate units of more than 1,500 square feet. RESPONDENT REPRESENTATIVE indicated that the County record countered this and the size he had considered in his appraisal was accurate. This comparable also had additional covered parking, almost two per unit. RESPONDENT REPRESENTATIVE'S second comparable was an apartment complex with separate buildings on four separate parcels. In addition, according to county record, the effective age for this comparable was much lower than for the subject property.

12. PETITIONER REPRESENTATIVE testified that the subject property did not have coin operated laundry facilities or vending machines. She argued it was not appropriate to add the additional 4%

non-rental income to the income stream. Respondent countered that there would still be other income from late fees, utility fees and forfeited depositions. Upon review of this information concerning “other income” and the comparables provided the Commission concludes that the subject property should not be compared with units that have laundry facilities and vending machines generating additional income. For that reason Respondent’s conclusion of 4% appears high. The Commission notes a significant variation between the various comparables concerning the “other income,” ranging from 1.85% to 5.69 %. Based on the lack of laundry and vending facilities at the subject, the lower end of the range would be more appropriate rather than an average.

13. A large discrepancy between the income approaches presented by each party was the capitalization rate. PETITIONER REPRESENTATIVE supported her rate of %%% with rate comparables that she indicates COMPANY purchased from realtors. The Commission notes that two of the comparables used to support the rate of %%% were from sales that occurred in 2001. RESPONDENT REPRESENTATIVE’S rates were based on sales after the lien date. PETITIONER REPRESENTATIVE had additionally provided a Salt Lake County Investment Study that compared rates from mid-year 2002, 2003 and 2004. This certainly indicates that rates went down between midyear 2003 and midyear 2004 and would suggest a rate around %%% for the lien date at issue.

14. Upon weighing the comparable sale, the comparables submitted by Petitioner appeared to be inferior to the subject, while Respondent’s sales were superior, indicating a value somewhere between. Considering the income approach, the Commission agrees with RESPONDENT REPRESENTATIVE as far as rent, vacancy and expenses. However, the evidence indicates RESPONDENT REPRESENTATIVE’S capitalization rate is too low and “other income” is too high. Based on the capitalization comparables supplied by the parties and the report provided by Petitioner that compared the rates for 2002, 2003 and 2004, a capitalization rate closer to %%% would be appropriate. In addition a lower amount of “other income” would be indicated. These changes in the income approach support a value at the low end of RESPONDENT

REPRESENTATIVE'S indicated range from his sales approach, a value of \$\$\$\$ per unit, or \$\$\$\$ for the subject apartment complex.

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

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

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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). Petitioner has presented sufficient evidence to show error and support a lower value in this matter.

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 _____, 2005.

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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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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