

04-0457
Locally Assessed Property Tax
Signed 03/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal Nos. 04-0457
)	Tax Type: Property Tax/Locally Assessed
)	Parcel Nos: #####-1, #####-2
BOARD OF EQUALIZATION OF)	#####-3, #####-4
SALT LAKE COUNTY,)	#####-5, #####-6
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 1, Attorney at Law
 PETITIONER REPRESENTATIVE 2, General Partner, PETITIONER
 PETITIONER REPRESENTATIVE 3
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy District Attorney
 RESPONDENT REPRESENTATIVE 2, Deputy District Attorney
 RESPONDENT REPRESENTATIVE 3, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 6, 2005. Petitioner had submitted a posthearing Memorandum of Law on June 21, 2005 and Respondent a Response on July 7, 2005. Subsequent to the hearing and prior to this decision being written, the Administrative Law Judge who heard the appeal for the Commission retired. The undersigned Administrative Law Judge has reviewed the entire recording of the Formal Hearing. Based on the evidence and testimony

presented at the Hearing the Tax Commission finds the following:

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 six adjacent parcels, parcel nos. #####-1, #####-2, #####-3, #####-4, #####-5, and #####-6. The property is located at ADDRESS, CITY, Utah.

3. The subject parcels are operated as a unit and comprise an apartment complex.

4. The total prior value, which resulted from an Initial Hearing in this matter, for all six parcels was \$\$\$\$\$. Prior to the Formal Hearing in this matter, on May 17, 2005, the parties entered into a Stipulation for entry of Order, in which they agreed that that the market value for the combined properties was \$\$\$\$\$. However, in the stipulation, Petitioner reserved the right to argue a deduction for the prepayment and yield maintenance requirements of Petitioner's financing arrangement for the property.

5. Petitioner began construction of the first and second phases of the apartment complex in 1985. Petitioner was able to obtain financing for the project in 1988 with a 10% interest rate. Subsequently interest rates began decreasing and in 1997 Petitioner refinanced at a rate of 8.7% that was a market rate at that time. The terms of the financing also provided funds for additional phases. However, with the refinance Petitioner agreed to a twenty-five year term and a substantial yield maintenance prepayment penalty. Essentially if paid prior to the expiration of the term, Petitioner is required to pay an amount equal to the yield that the lender would have received through the entire term. If sold around the lien date at issue the amount of the prepayment penalty would be \$\$\$\$\$. Petitioner's representative states that at the time Petitioner entered into this arrangement, Petitioner did not know that interest rates would fall even lower.

6. PETITIONER REPRESENTATIVE 3, Real Estate Broker, indicated that he listed these types

of properties and opined that the financing arrangement was taken into account in the price paid. He testified, in his extensive experience as a broker, there would be a different price if the property was unencumbered than if the buyer assumed the current unfavorable financing terms. He testified that the difference between a cash value and the price paid when the property was encumbered with a yield maintenance prepayment clause was generally the prepayment penalty amount, in this case \$\$\$\$\$. No evidence was submitted by Respondent to contradict that the amount would be \$\$\$\$\$, if the Commission found Petitioner's argument were correct.

7. The unfavorable financing is an obligation of Petitioner. A purchaser would not be subject to Petitioner's financing terms if the purchaser paid cash for the property or purchased with his or her own financing. The only way a prospective purchaser would be subject to the terms of the Petitioner's current financing is if the purchaser assumed the terms.

8. The cash equivalent or fee simple value for the subject property for the lien date at issue is the \$\$\$\$\$ as agreed on by the parties in the stipulation. If the subject property sold for cash, or the purchaser came with his or her own financing, the price paid for the subject property would be the \$\$\$\$\$ stipulated value. However, if the buyer were to assume Petitioner's unfavorable financing terms currently in place, the amount the buyer would pay to Petitioner would be reduced by an amount equal to the diminution in value attributable to the unfavorable financing terms. In this matter the evidence was uncontested the diminution in value would be the \$\$\$\$\$ prepayment penalty. However, under either scenario the buyer is actually paying \$\$\$\$\$. Petitioner fails to consider in its argument the cost to the buyer of assuming the unfavorable financing terms.

9. The parties had stipulated that the market value of the property was \$\$\$\$\$, with the exception that Petitioner could argue a deduction for the prepayment penalty. Although Petitioner questioned Respondent's appraisal methodology at the hearing, this was not an appropriate issue considering the stipulation. Respondent valued the property on a cash equivalent basis consistent with the County's practice.

10. The fair market value of the subject property is \$\$\$\$\$. This is the value both parties agreed upon as the cash equivalent value and is equivalent to the fee simple value for the property.

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

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).

2. Petitioner argues that the fair market value of its property should be reduced by \$\$\$\$ that is the amount of what is essentially a prepayment penalty. Respondent argues that the assessed value for property tax purposes is based on the fee simple or cash equivalent value which both parties agreed was \$\$\$\$\$. Respondent indicates that it values all its properties and a cash equivalent basis and if it did not do so, properties identical in all real and physical aspects would be valued differently based on the terms of financing the owner was able to negotiate. The Commission finds Petitioner's position inconsistent with the law and Utah Constitution as it would result in unequal values. See Utah Code Secs. 59-2-103, 59-2-1006 and Utah Constitution, Article XIII, Section 2(1). This would be a significant departure from the current law and assessment practice and would require in the least a legislative change to have the terms of financing considered in the assessed value. Respondent cites to a number of cases from other jurisdictions on this issue.

3. Respondent's position in this matter is consistent with appraisal practice. When performing a fee simple fair market appraisal, an appraiser does not adjust the value of the property being appraised based on the current owners unfavorable financing terms if they were terms such as are at issue in this matter. The appraisal expert in this matter testified to viewing at least one hundred fee appraisals prepared by appraisers who were not employed by the County and that financing was not deducted from the subject

property in the manner requested by Petitioner. Appraisers may adjust the price of a comparable to a cash equivalent price, because the value is fee simple value. Although allowed time after the hearing to submit legal or appraisal support for its position, Petitioner could not cite to any appraisal text, case law or statute. Petitioner did not provide an appraisal expert in this matter. Respondent's appraisal testimony on this point was uncontroverted.

4. Petitioner did cite to the Utah Property Tax Administration Standards of Practice arguing they supported its position. Petitioner cites the Real Property Valuation Standards of Practice 6, pages 6-32 through 6-33. However, Petitioner's representative is taking the matter out of context. That section refers to comparable sales that are then used to value a subject property. The Standards of Practice indicate that the County would need to convert comparable sales to the cash equivalent value as they may require adjustment for "unusual financing." This is necessary as the value the County is instructed to derive for a subject property for assessment purposes is a cash equivalent value. In fact as argued by Respondent the Standards of Practice actually support the County's position. Respondent points out that Standards of Practice Sec. 6.2.1 at page 6-15 (2002) states, "For ad valorem tax purposes, properties are generally appraised as if all ownership rights and interests are attached, i.e., fee simple interest."

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the combined market value of the subject property as of January 1, 2003 is \$\$\$\$\$. The amount allocated to each parcel is as follows:

#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$
#####-5	\$\$\$\$\$
#####-6	\$\$\$\$\$

The County Auditor is ordered to adjust the assessment records as appropriate in compliance

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with this order.

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 Sec. 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 Sec. 59-1-601 and 63-46b-13 et. seq.

JKP/04-0457.fof