

04-1596  
Locally Assessed Property Tax  
Signed 08/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>Initial Hearing Decision and Order</b>	
	)		
Petitioner,	)	Appeal No.	04-1596
	)		
v.	)	Parcel. No.	MULTIPLE - 26
	)		
Board of Equalization of UINTAH	)	Tax Type	Property Tax
County, Utah,	)		
	)	Tax Year	2004
Respondent.	)		

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**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:**

Marc B. Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE 1, Representative  
                  PETITIONER REPRESENTATIVE 2, Representative  
For Respondent: RESPONDENT REPRESENTATIVE, County Assessor

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 March 30, 2005. The issue in this proceeding is the fair market value of the subject property as of January 1, 2004. The subject property consists of 26 residential condominium units, under single ownership, out of 47 total units the PETITIONER condominium complex. Of the 21 units that are not under appeal, 11 are individually owned and occupied. The other ten are owned by two different individuals and are rented out.

The units are located in CITY 1, Utah. They range in size from 912 to 1,260 sq. ft.. They are mostly two bedroom units, but some of the units have three bedrooms. On site parking is available and 11 units have a basement garage. The assessor originally valued the units at a range of approximately

\$\$\$\$\$ to \$\$\$\$\$, depending mainly on size, basement finish and basement garages. The Board of Equalization (BOE) sustained those values. Petitioner is seeking a value of \$\$\$\$\$ in total for all 26 units combined.

#### 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(11).)

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).

The presumption of correctness for the original valuation does not arise unless and until available evidence supporting the original property valuation is submitted to the Commission. *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000).

#### DISCUSSION

Petitioner presented a valuation analysis utilizing the income approach to establish the value. The estimated income was based on a survey of local apartment rents and vacancy. Expenses were derived from a publication that derived average or typical expenses for apartments of 50 units or larger for the “( X ).” The published survey results were for the year 2002. Petitioner also estimated reserves for replacement at 3% of effective gross income, and a %%% capitalization rate using a band of investment analysis.

The income approach was supported by a comparable sales analysis. Several sales were provided that took place in CITY 1. They ranged from 6 to 40 units. Other sales used were a 20-unit complex in CITY 2, Utah and seven complexes in CITY 3, Utah. The latter ranged from 5 to 12 units.

Petitioner’s argument for valuing the property as an apartment complex was based on the fact that after selling 21 units over a four-year period, the owner decided not to sell any more units.

Petitioner’s representative, PETITIONER REPRESENTATIVE 1 is neither licensed as an appraiser under Utah law. Nor, by order of the Division of Real Estate, is she permitted to testify or

submit appraisals before this Commission if they are done in exchange for compensation. PETITIONER REPRESENTATIVE 1 testified that her testimony and analysis were done for no compensation.

The assessor prepared a valuation report for each of the 26 units. Each valuation utilized the three approaches to value. The comparables sales approach typically consisted of two sales within the subject complex, and one from another complex. The income approach was based on a gross rent multiplier (GRM) derived from sales within the subject complex.

Five different values were estimated for different groups of similar units:

- a. \$\$\$\$\$ – 912 sq. ft.; 432 sq. ft. unfinished basement
- b. \$\$\$\$\$ – 960 sq. ft.; 448 sq. ft. unfinished basement
- c. \$\$\$\$\$ – 1,098 sq. ft.; 529 sq. ft. unfinished basement
- d. \$\$\$\$\$ – 960 sq. ft.; 448 sq. ft. finished basement
- e. \$\$\$\$\$ – 1,235 sq. ft.; 588 sq. ft. basement garage

The reports were not titled as “appraisals”, they were not dated or signed, nor was there any indication of compliance with the Uniform Standards of Appraisal Practice (USPAP). The Commission notes, however, that the assessor, RESPONDENT REPRESENTATIVE, is licensed in Utah as a certified appraiser.

Upon reviewing the evidence, the Commission determines that Petitioner’s approach to valuing the property as an apartment complex has no basis in fact. Almost half of the units are separately owned from those under appeal. Petitioner provided no example of an apartment complex selling in part, with adjoining units under different ownership. No examples were provided, other than the subject, of any group of condominiums within a complex operating as an apartment. There was no analysis to establish that the highest and best use of all of the units in total would be as an apartment complex. Petitioner did submit a prior Tax Commission Order on a group of condominiums that had been valued as a single apartment complex. The Commission notes that that Order was for a specific property, with facts and circumstances that were unique for that particular appeal. It has no bearing on this appeal. The Commission therefore does not need to examine the validity of Petitioner’s valuation analysis. The Petitioner has not met the burden of proof.

Respondent, however, also has an equal burden. Since the new values differ from those established by the BOE, they do not have the presumption of correctness. Petitioner did challenge some of Respondent’s analysis, such as the direct comparability of comparable sales and the weakness of using a GRM. The Commission recognizes both some inherent weakness in a GRM analysis, as well as the fact that the assessor appeared to use only three out of six available sales from the complex. However, the Commission does not find any substantial problems with Respondent’s valuations. All of the values were given most weight from the comparable sales. The new values are adequately supported and appear to be

consistent with the market information provided by the assessor. In addition, Petitioner failed to establish that any of the new values set by the assessor were not at fair market value.

Although the new values are only slightly different than the original values, the Commission finds that there is no basis for the values to remain at those established by the BOE.

DECISION AND ORDER

The Commission finds that the Petitioner has not shown compelling errors in the Respondent's new values and has not established a better value for the property. On the evidence and testimony presented, the Commission finds the fair market value of the subject property to be those established by the Respondent as of January 1, 2004. The decision of the Uintah County Board of Equalization is set aside and the new values to be put in place according to the values set by the assessor.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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, Utah 84134

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Marc B. Johnson  
Commissioner

The undersigned Commissioners have reviewed this matter and concur in this decision.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis

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Commissioner

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## ADDENDUM

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