

04-1597  
Locally Assessed Property Tax  
Signed 08/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 and	)	<b>Initial Hearing Decision and Order</b>	
PETITIONER 2,	)		
	)		
Petitioners,	)	Appeal No.	04-1597
	)		
v.	)	Parcel. No.	MULTIPLE - 10
	)		
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 (Relative of the  
                          Owner)  
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 10 separate four-plexes on separate lots, all under single ownership, or 40 total units, known as the ( X ). The units are located in CITY 1, Utah. They are 4,352 sq. ft. in size, or 1,088 sq. ft. per unit, and each unit has three bedrooms. On site covered parking is available for all units. The assessor originally valued the buildings at \$\$\$\$ each, for a total of \$\$\$\$\$. The Board of Equalization (BOE) sustained those values. The assessor is

requesting a value of \$\$\$\$ per building, or a total of \$\$\$\$\$. Petitioner is seeking a value of \$\$\$\$ in total for all 10 buildings or 40 units combined.

The primary issue in this matter is whether the property should be valued as a single apartment complex, or whether it should be valued as separate four-plexes. This is a question of highest and best use. With the understanding and approval of both parties, Commissioner Johnson visually inspected the site. Commissioner Johnson also informed both parties that he would use aggregate information taken from another appeal heard at the same time. Both appeals, 04-1597 and 04-1603, involved buildings and rental units that were virtually identical. PETITIONER REPRESENTATIVE 1 represented both of the owners. Both parties agreed to the sharing of evidence between appeals, most of which was common between them.

#### 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 an analysis utilizing the income approach to establish the requested value. The estimated income was based on a survey of local apartment rents and vacancy rates. The market rent was determined to be \$\$\$\$ per unit per month, with a stabilized vacancy rate of 10%. Expenses were taken from a publication that derived average or typical expenses for apartments of 50 units or more for the “( X ).” The published survey results were for the year 2002. Based on this information, expenses were estimated to be \$\$\$\$ annually. 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 and sold from \$\$\$\$\$ to \$\$\$\$\$ per unit. The most recent of the sales took place in April, 2001. Petitioner also used a 20-unit complex in CITY 2, Utah and 7 other complexes in CITY 3, Utah. The latter ranged from 5 to 12 units at a unit price ranging from \$\$\$\$\$ to \$\$\$\$\$. These sales took place mainly in 2003, with three transactions in 2002 and one in 2001. Based on Petitioner's income derived value of \$\$\$\$\$, the unit price would be \$\$\$\$\$.

Petitioner's argument for valuing the property as an apartment complex was based on the fact that the units have been operated under single ownership as a consolidated complex since their construction.

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 10 units. Each report utilized the three approaches to value. The comparables sales approach was based on sales of freestanding four-plexes. The income approach was based on a gross rent multiplier (GRM) derived from sales within the subject complex. A GRM of 86, applied to a monthly rent of \$\$\$\$\$ per unit. The rents were based on a survey of other rental property in the area. None of the rental units used in the GRM analysis were identified by location.

Respondent's justification for appraising the units independently of each other is that each has its own legal description and therefore can be sold as individual property.

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.

Respondent has the same burden as the Petitioner to establish a value other than that set by the BOE. Since the new values proposed by the assessor differ from those established by the BOE, they do not have the presumption of correctness.

Aside from the highest and best use question, Respondent questioned Petitioner's valuation on two issues. First, the assessor provided testimony and evidence that the market vacancy rates for the area were between 1% and 7%. In the survey provided, however, none of the responding apartments were more than 24 units, and most were 4 to 6 units. The average of the vacancy rates over a 2-year period was 2%. The average vacancy rate for all of the rental units provided by both parties is 6.5%. Respondent testified that market vacancy rates in the area were between 0 and 5%.

Respondent also noted the expenses were based on data for the “( X )” Respondent testified that the assessor’s surveys reported expense rates from 23.5% to 48%.

Furthermore, with respect to the question of expenses, Respondent noted that in Appeal 04-1603, which involved seven identical buildings (28 units) adjacent to the subject, PETITIONER REPRESENTATIVE 1 used expenses of \$\$\$\$ per unit, while in this case she used \$\$\$\$\$. This is because Petitioner used different source material. In this appeal she used data for 50 units or larger for 2002. (This was later supplemented with 2004 data that used \$\$\$\$.) In the other appeal 2002 data for 10-49 units was used. The Commission notes further that in this appeal Petitioner estimated market rent to be \$\$\$\$ per unit, while \$\$\$\$ was used for Appeal 04-1603.

PETITIONER REPRESENTATIVE 2, testifying on behalf of the owner, responded that the actual vacancy as of the lien date was about 10-20%. He also stated that expenses in CITY 1 were actually higher than in CITY 4.

Petitioner likewise challenged the assessor’s valuation report. The major issue was that the use of a GRM method in the income approach was highly speculative. Respondent replied that it is an accepted appraisal technique. However, Petitioner provided a copy from a student manual published by the Appraisal Institute that specified weakness in using a GRM. These included that it is “. . . a rough measure of the earning power of a property” compared with using net operating income, and that “[t]he sales and rentals need to be comparable in all aspects.”

The review of the site visit yielded the following information. Of the ten properties, only four have public street access and frontage. The other six are accessed via a paved right of way, apparently a private road that cuts across all ten lots. Two of the lots share a common area that is used by all tenants. The covered parking consists of several carports that are sited on single lots. Some of the lots have no parking on the actual site. Access from the public roads to the interior right of way is marked by signage identifying the buildings as a single apartment complex.

Commission determines that the although Respondent is technically correct in that the properties could probably be sold legally, with one possible exception, as separate four-plexes two major issues remain unaddressed. These are how the common area and covered parking would be handled. The exception is that the issue of the interior right of way and legal access to some of the properties would need to be addressed even before marketing the properties individually. The failure to account for these facts leads the Commission to conclude that the individual values would be significantly lower than those proposed by the assessor. Accordingly, the Commission also determines that the appropriate way to treat this property for appraisal purposes is to value it as an apartment complex.

The only valuation approach that deals with this property as an apartment complex is that submitted by the Petitioner. However, the Commission finds several weaknesses with Petitioner’s

analysis. A major fault in the income approach is the use of expenses from the CITY 4 area. Although Petitioner argued expense in CITY 1 are higher than in CITY 4, there is no documentation of expenses by which that statement can be judged. The assessor, on the other hand, testified that she was unable to obtain consistent expense information, which is why she chose to use the GRM method, which does not take expenses into account. Nevertheless, the assessor could have offered an opinion of a more appropriate expense rate or ratio, or even requested to see the taxpayers actual operating expenses. The assessor did offer an opinion as to vacancy rates, which the Commission finds more credible than those used by the Petitioner. Furthermore, the Commission notes that the base “band-of-investment” method used to develop a cap rate was %%%%. Petitioner then added %%%% because the %%%% “appears to be low.” The Commission believes that %%%% may be more accurate since Petitioner’s adjustment was not corroborated in any meaningful way. In fact, although Petitioner’s comparable sales were dated, the indicated cap rates supported a lower figure. Petitioner submitted a more current expense study that estimated a per unit rate of \$\$\$\$ for 10 – 49 unit apartments. The rent used by Petitioner was based on a single lease for the subject property. It was bracketed by leases submitted by both parties, and the Commission therefore determines \$\$\$\$\$, as submitted by the Petitioner, to be appropriate. Substituting, a vacancy rate of 5% derived from Respondent’s survey, \$\$\$\$ for expenses, and a %%%% cap rate into Petitioner’s income analysis yields a value of approximately \$\$\$\$\$. Based on a 5% vacancy rate derived from Respondent’s survey of apartment vacancies in the area, the \$\$\$\$ per unit expense used by Petitioner equates to a 46% expense rate. This is at the high end of Respondent’s informal survey of area vacancy rates. If an expense rate of 36% is used, based on averaging the high and low figures of the range stated by the assessor, the value of the property would be \$\$\$\$\$.

Although neither report provided any relevant comparable sales information, Petitioner provided a closing statement, attached to pages taken from an appraisal report, of a 40-unit apartment. This sale was used in an appraisal done by the assessor for Appeal 04-1603. This apartment also consists of ten 4-unit buildings. It sold for \$\$\$\$ in January of 2000.<sup>1</sup> This was almost four years before the lien date. In all of the various reports for the different appeals, Respondent used a time adjustment of 0.7% per month. Petitioner did not refute this adjustment. This results in a present value of \$\$\$\$\$, rounded to \$\$\$\$\$, or \$\$\$\$\$ per unit. The Commission does not find the sale to be determinative in and of itself. However, out of all of the evidence and testimony presented on comparable sales, it is the most relevant in establishing fair market value for the subject property. The Commission notes further that in Appeal 04-1603 the

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<sup>1</sup> According to the assessor’s report the sale was for \$\$\$\$ and took place in March of 2000. There is nothing to corroborate this date. As to the \$\$\$\$ difference in the sale price on the purchase contract and the price reported by the assessor, it appears to be for additional “repairs and upgrades” made by the purchaser. These would not be part of the purchase price.

Respondent used a unit rate of \$\$\$\$ in the comparable sales approach, which the Commission found acceptable. Applying this rate to 40 units yields a value of \$\$\$\$.

The Commission finds that neither approach to value demonstrates a compelling reason to support one over the other. Although Petitioner provided the only correct appraisal methodology to the subject property, the Commission finds this approach alone is inadequate. Because of the similarity between this property and the property in Appeal 04-1603, the Commission believes it necessary to use the information in that appeal to determine a more reliable and equitable estimate of fair market value for this appeal. In total the Commission believes that Petitioner's income approach, adjusted by the Commission, Respondent's unit value derived from the comparable sales approach in Appeal 04-1603, and the sale of the 40-unit apartment complex establish a reasonable range of value of \$\$\$\$ to \$\$\$\$. Although the original assessment was not supported directly, the evidence in totality corroborates that value, which is \$\$\$\$.

#### DECISION AND ORDER

On the evidence and testimony presented, the Commission finds the fair market value of the subject property as of January 1, 2004 is \$\$\$\$. The decision of the Uintah County Board of Equalization is therefore sustained.

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 \_\_\_\_\_, 2005.

BY ORDER OF THE COMMISSION:

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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  
Commissioner

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**ADDENDUM**

**PARCELS:**

**#####-1**

**#####-2**

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