

04-1598
Locally Assessed Property Tax
Signed 08/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	Initial Hearing Decision and Order	
)		
Petitioner,)	Appeal No.	04-1598
)		
v.)	Parcel. No's	##### through #####
)		
Board of Equalization of Uintah)	Tax Type	Property Tax
County, Utah,)		
)	Tax Year	2004
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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Representative
 PETITIONER REPRESENTATIVE 2, Representative (related by family)
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 property is located in CITY 1, Utah. Subject property is a 44-unit condominium property with individual serial numbers, described as (X). The improvements consist of 11 buildings, each containing 4 individual units. Each unit is a two-story 1,152 square foot condominium, three bedrooms, and one and a half bath, with exterior siding and composition shingle, built in 1981. There is off-street parking and a small, fenced, private yard with each unit. The units are located on approximately 3 acres at ADDRESS in CITY 1, Utah. The Uintah County Assessor had assessed each unit at \$\$\$\$\$. The Board of Equalization (BOE) sustained those values. These values are

consistent with prior appeals, 03-0027 and 04-0185, wherein the Commission ultimately found that the appropriate way to appraise the entire property was as a single apartment complex, with the total value of \$\$\$\$ being allocated to each parcel. Petitioner is requesting a total valuation of \$\$\$\$ or \$\$\$\$ per unit. Respondent is request a change in value to \$\$\$\$\$, or \$\$\$\$\$ per unit.

Commissioner Johnson informed both parties that he might use aggregate information taken from other appeals heard at the same time. All of the appeals, 04-1596 through 98 and 04-1603 involved rental units that were similar in general physical characteristics. Some were condominiums and some were individual four plexes. PETITIONER REPRESENTATIVE 1 represented all of the owners, and three of the owners are related by family. 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 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 rates. The market rent was determined to be \$\$\$\$per unit per month, with a stabilized vacancy rate of 10%. 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. Based on this information, expenses were initially estimated to be \$\$\$\$ annually. At the hearing Petitioner substituted a copy from the same publication showing rents for 10-49 units at \$\$\$\$ for the 2004 year. Petitioner also estimated reserves

for replacement at 3% of effective gross income, and a %%% capitalization rate using a band of investment analysis.

In addition to the income approach Petitioner provided a number of comparable sales. 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.

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 that utilized the three approaches to value. The comparables sales approach was based on sales of other apartment complexes. The income approach was based on a gross rent multiplier (GRM).

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, however, 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.

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%, based on a survey taken by the assessor's office. In that survey, 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 survey's reported expense rates from 23.5% to 48%.

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 appraisal. 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 Commission is persuaded that the use of a GRM based on general apartment rents is, at best, speculative and unfounded. The only relevant GRM was derived from comparable sale number 2 in the assessor's valuation report. At 60.36, it did not corroborate the 86 figure used in the income approach.

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 reliable 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 and rents, 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. Finally, Petitioner submitted a more current expense study that estimated a per unit rate of \$\$\$\$ for 10 – 49 unit apartments. At 40%, this amount is within the range of expenses ratios submitted by Respondent. Both parties used a market rent of \$\$\$\$ per unit. Substituting a vacancy rate of 5% derived from the assessor's survey, \$\$\$\$ for expenses, and a %%%% cap rate into Petitioner's income analysis yields a value of approximately \$\$\$\$ or \$\$\$\$ per unit.

In reviewing Respondent's appraisal, the Commission finds the comparable sales approach to be the most persuasive technique. There were some weaknesses such as using a GRM based calculation to make adjustments for size and other physical characteristics. The Commission is persuaded that the weakness of a GRM in the income approach carries over to its use in making adjustments for the comparable sales approach, and therefore weakens the reliability of this approach. Other than that, Petitioner offered no material criticism to the Respondent's sales comparison analysis. Two of Respondent's three comparable sales are smaller than the subject, being nine and sixteen unit complexes.

Comparable number two, however, consists of ten 4-unit buildings. It sold for \$\$\$\$\$ in January of 2000.¹ 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, rather than \$\$\$\$\$ the assessor used in the comparable sales approach. Applying \$\$\$\$\$ to 44 units yields \$\$\$\$\$.

The Commission finds that Petitioner's income approach, adjusted by the Commission, and Respondent's comparable sales approach giving the most weight to the 40-unit sale to be somewhat reliable. Thus the range of probable values is \$\$\$\$\$ 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:

Marc B. Johnson
Commissioner

¹ 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.

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

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner