

04-1599  
Locally Assessed Property Tax  
Signed 02/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	04-1599
	)	Parcel No.	Multiple-10
v.	)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)		
OF UTAH COUNTY,	)	Tax Year:	2004
STATE OF UTAH,	)		
	)	Judge:	Davis
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 notice, 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:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE 1  
PETITIONER  
PETITIONER REPRESENTATIVE 2  
For Respondent: RESPONDENT REPRESENTATIVE 1, Uintah County Assessor  
RESPONDENT REPRESENTATIVE 2, Deputy, Uintah County  
Clerk/Auditor

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 April 27, 2005.

Administrative Law Judge Blaine Davis presided at the Initial Hearing and heard the appeal on behalf of the Commission. However, he retired prior to the issuance of this decision. This decision has been made based on his notes and the documents in the file. The Initial Hearing was not recorded and for that reason if the parties feel their arguments or evidence have not been addressed in this decision, they may want to consider requesting a Formal Hearing. The instructions for requesting a Formal Hearing are outlined at the end of this decision.

The issue in this proceeding is the fair market value of the subject property as of January 1, 2004. The Uintah County Assessor originally valued the subject properties at a total of \$\$\$\$\$. Upon appeal to the Uintah County Board of Equalization, a value of \$\$\$\$\$ was determined for all of the properties. This represented a valuation of \$\$\$\$\$ per property for each of 10 separate parcel numbers.

The subject property consists of 10 separate four-plexes on separate lots, or a total of 40 units, known as the APARTMENTS. The units are located in CITY 1, Utah, and each unit has three bedrooms and one and a half baths. The units do not have either garages or carports.

Petitioner was represented by PETITIONER REPRESENTATIVE 1, who is not a licensed appraiser under Utah law. In addition, PETITIONER REPRESENTATIVE 1 is under an order by the Utah Division of Real Estate, which prohibits her from testifying or submitting appraisals before this Commission if they are done in exchange for compensation. PETITIONER REPRESENTATIVE 1 testified that her testimony and analysis were not done in exchange for compensation.

PETITIONER REPRESENTATIVE 1 presented an analysis that relied primarily upon the income approach to value. It was represented that most of these three-bedroom units are rented for a price of \$\$\$\$\$ per month, and that \$\$\$\$\$ per month is a reasonable market rent for these units. At that rent, the property would generate a total of \$\$\$\$\$ if each apartment was rented for \$\$\$\$\$ per month for the full 12 months of the year. Petitioner then represented that as of the lien date, the property had a vacancy rate of 20%, but requested a reasonable stabilized vacancy rate of 10%. PETITIONER REPRESENTATIVE 1 then deducted operating expenses of \$\$\$\$\$ per unit per year, and a reserve for replacements of 3%. The net income was then capitalized at %%%%, which resulted in an indicated fair market value for the subject property of \$\$\$\$\$. PETITIONER REPRESENTATIVE 1 rounded that amount to \$\$\$\$\$, which was her requested valuation for the subject property.

Petitioner also presented a list of sales of multiple unit apartments in CITY 1, Utah. Some of those sales were as old as 1995, and the most recent sale was April of 2001. The sales sold for prices as high as \$\$\$\$\$ per unit, but that was for a sale in June of 1999. Petitioner did not present adjustments for those sales, so they do not present a reliable indicator of value.

Respondent did not value the subject property as a single operating unit, but instead valued the property as 10 separate four-plex units.

Respondent also presented an analysis of the subject. That analysis was not labeled as an appraisal, and did not meet the standards required by USPAP to be an appraisal. Nevertheless, the

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appraisal was prepared by RESPONDENT REPRESENTATIVE 1, the Uintah County Assessor, who is a licensed appraiser in the State of Utah.

In the analysis presented by Respondent, a presentation was made on the cost approach, sales comparison approach, and the income approach. Respondent did not rely to any degree on the cost approach, but did state that the cost approach would indicate a value of \$\$\$\$\$ per building, which would be a total of \$\$\$\$\$ for all 10 units.

In the sales comparison approach, Respondent presented three comparable sales of four-plex units. Those units sold for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. Respondent made adjustments to those sales prices to arrive at adjusted sales prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The primary adjustment made by Respondent was for size, because the subject property is larger. However, the size adjustment was based upon gross square feet, and the comparable sale properties all appeared to have a main floor and an upstairs, whereas the subject property had a main floor and a basement. It is commonly acknowledged that basements do not have the same value as a second story.

For the income approach, Respondent did a study of the multiple housing market in the CITY 1 area, and came up with a substantial difference. The vacancy rates were in a range between zero and 7%, and the reported expenses ranged between 23.5% and 48%. Because there was no consistency within those areas, Respondent did not use a standard income approach, but instead relied upon a gross rent multiplier (GRM) of 86, i.e., she multiplied the monthly rent times the number of units times the gross rent multiplier of 86. Based upon that analysis, using an

estimated market rent of \$\$\$\$ per month, the value of each unit would be \$\$\$\$\$. Respondent reconciled all three indicators of value to arrive at an estimated value for each of the units of \$\$\$\$, which would result in all ten units being valued at a total of \$\$\$\$.

In response to Respondent's use of a GRM of 86, Petitioner presented evidence from a Student Manual from the Appraisal Institute, in which the following statements about the GRM were made.

"The gross income is a rough measure of the earning power of a property . . . . Of course, a more precise measure is the net operating income after expenses are subtracted:"

"The technique is only applicable where reliable sales and rental data exists in sufficient quantities."

"The sales and rentals need to be comparable in all respects."

"In deriving a GRM from the market, the appraiser must be consistent. If the subjects contract rents are different from market rents, it is inappropriate to use a comparable property's market rents to derive a GRM and apply this to the subject's contract rents. If a comparable sale is rented at below market rates, the GRM from this sale would be overstated. Applying this GRM to the subject's estimated market rents would result in an inflated value estimate."<sup>1</sup>

#### APPLICABLE LAW

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<sup>1</sup> State Certification Prep Series, "Two-to-Four Unit Case Study: Residential (R<sub>3</sub>)" Student Manual, (Chicago, IL: The Appraisal Institute, 1996), 13-14, 17-18.

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, 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), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

5. Because Respondent did not present any evidence to support the original valuation, the value proposed by Respondent is not entitled to a presumption of correctness. Where the County Assessor has requested an increase from the value determined by the Board of Equalization, the County Assessor has the burden of establishing that the Board of Equalization value contained an

error and of providing the Commission with a sound evidentiary basis for increasing the original valuation to the amount proposed by the County Assessor.

### DISCUSSION AND ANALYSIS

One of the key differences in the valuation analysis presented by each of the parties is whether the property should be valued as 10 separate four-plexes, or as an apartment complex of 40 units. Respondent argued vigorously that the 10 separate units sit on 10 separate parcels of property, and could be sold separately as four-plex units, and therefore the value should be based upon the value of separate four-plexes.

On the other hand, Petitioner presented evidence through the owner of the property that the properties could not be sold separately as four-plexes. Petitioner testified that there is only one water meter for the sprinkling system, and the sprinkling system for the apartment complex operates as a unit. In addition, the parking areas for each building would not be within the legal boundaries of that particular unit. Instead, the parking is shared by all of the units, with the ability to park anywhere within the apartment complex. Petitioner further testified that the units were built as an apartment complex, and have always been conveyed and operated as an apartment complex, and never as individual units. Further, some of the driveways of the complex run along the boundary lines, and if the units were sold separately, it would require slicing some of the current driveways onto two separate parcels of land.

Based upon the testimony of the parties, the Commission finds that the appropriate method of valuation for the subject property would be to value them as an apartment complex of 40 separate three-bedroom apartments, rather than to value them as 10 separate four-plexes. Because Respondent did not present any evidence on the value of the subject property as an apartment complex, instead of as separate units, the only evidence presented regarding an apartment complex was presented by Petitioner.

In reviewing Petitioner's income approach, there were questions raised by Respondent regarding the vacancy rate used by Petitioner. Petitioner used a stabilized vacancy rate of 10%, although it was represented that the actual vacancy rate was only 6%. Respondent did present evidence that in response to questionnaires sent by her office, owners of property indicated their properties had vacancy rates between zero and 7%.

Petitioner presented the vacancies for other apartment complexes, and represented that the vacancy rate averaged 16%, and was in a range between 5% and 28%. Because the evidence on vacancy rate is not conclusive, the Commission determines that a vacancy rate of 5%, derived from Respondent's testimony and evidence, would be appropriate.

Petitioner also used operating expenses of \$\$\$\$\$ per unit. However, those expenses are based on CITY 2 rates, and were for properties of 50 units or larger, which is larger than the subject property. The operating expenses for 10–49 units was \$\$\$\$\$ per unit. Therefore, the Commission determines that the operating expenses should be \$\$\$\$\$ per unit.



Respondent did not challenge the reserve for replacements of 3%. However, the Commission notes that Petitioner's base "band-of-investment" method used to develop a cap rate was 10%. Petitioner then added 0.5% because the 10% "appears to be low." The Commission believes that 10% may be more accurate since Petitioner's adjustment was not corroborated in any meaningful way. Based upon this adjusted vacancy rate and the adjustment to the operating expenses, the net income for this property would be \$\$\$\$\$. Using a %%% capitalization rate would indicate an estimated value for all of the properties of \$\$\$\$\$.

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. 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

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of all of the subject properties as of January 1, 2004 is a total of \$\$\$\$\$, or \$\$\$\$\$ for each of the properties.

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The Uintah County Auditor is hereby ordered to adjust its records in accordance with this decision.

It is so ordered.

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 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

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Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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ADDENDUM

These are the parcels included in this appeal:

- #####-1
- #####-2
- #####-3
- #####-4
- #####-5
- #####-6
- #####-7
- #####-8
- #####-9
- #####-10