

04-1600
Locally Assessed Property Tax
Signed 02/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1600
	)	Parcel No.	Multiple-4
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION)		
OF UTAH COUNTY,	)	Tax Year:	2004
STATE OF UTAH,)		
	)	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 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.

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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 four (4) separate parcel numbers.

The subject property consists of four (4) separate four-plexes on separate lots, or a total of 16 units, known as the APARTMENTS. The units are located in CITY, Utah, and each unit has two bedrooms and one bathroom. 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 which relied primarily upon the income approach to value. It was represented that most of these two-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 6%, 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, 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 low as \$\$\$\$ per unit for a sale in 1995, and as high as \$\$\$\$ per unit for a sale in June of 1999. The most recent sale was in April 2001 for \$\$\$\$ per unit. 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 four (4) 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 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

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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 four 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 than the comparables. It was acknowledged that comparable sales numbers 2 and 3 are superior properties compared to the subject.

For the income approach, Respondent did a study of the multiple housing market in the CITY area, and came up with a substantial difference. The vacancy rates were in a range between zero and 28%, and the reported expenses ranged between 23.5% to 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 of the 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.

APPLICABLE LAW

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 four (4) separate four-plexes, or as an apartment complex of 16 units. Respondent argued vigorously that the four (4) separate units sit on four (4) 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 are only two water meters for all of the units, and there is only one (1) water meter for the sprinkling system for the entire apartment complex which 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.

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 16 separate two-bedroom apartments, rather than to value them as four (4) 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.

Respondent testified that the units should rent for \$\$\$\$\$ per month if in good condition, but based on their current condition, they should still rent for \$\$\$\$\$ per month. The Commission finds that a rent of \$\$\$\$\$ per month is reasonable.

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

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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 survey, would be appropriate.

Petitioner also used operating expenses of \$\$\$\$ per unit, which at 50% is above Respondent's reported highest estimate of 48% from her survey. However, there is no better specific amount or percentage that can be relied upon other than that provided by Petitioner.

Respondent did not challenge the reserve for replacements of 3%, and Respondent also stipulated that a capitalization rate of %%% was reasonable.

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 \$\$\$\$\$, rounded to \$\$\$\$\$, or \$\$\$\$\$ for each of the buildings.

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

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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.

G. Blaine Davis
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 _____, 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 under this appeal:

#####-1

#####-2

#####-3

#####-4