

04-1602
Locally Assessed Property Tax
Signed 02/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1602
	)	Parcel No.	Multiple-3
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION)		
OF UINTAH 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.

Appeal No. 04-1602

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 \$\$\$\$\$ for one parcel, \$\$\$\$\$ for a second parcel, and \$\$\$\$\$ for the third parcel, or a total of \$\$\$\$\$. Upon appeal to the Uintah County Board of Equalization, a total value of \$\$\$\$\$ was determined for all of the properties.

The subject property consists of 3 separate properties on separate lots, which contain a total of 16 units. Two of the properties each have a four-plex built on the property, and the third property has two (2) four-plexes built on it. The units are located in CITY, Utah, and each unit has three bedrooms and one bathroom. The units do not have either garages or carports.

PETITIONER REPRESENTATIVE 1, who is not a licensed appraiser under Utah law, represented the Petitioner. 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 were rented for the full 12 months of the year. Petitioner then represented that as of the lien date, a reasonable stabilized vacancy rate would be 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 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 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 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.

Respondent did not originally value the subject property as a single operating unit, but ultimately agreed that it could properly be valued as a single operating unit, which would reduce the value from the comparable sales approach, as determined by Respondent, by 8%.

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 \$\$\$\$\$ for the property with two buildings and \$\$\$\$\$ for each of the other properties.

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 \$\$\$\$\$ after the 8% reduction. The primary adjustment made by Respondent was for unit breakdown (rooms).

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 7%, 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 the two four-plex properties would be \$\$\$\$\$, and for the single four-plex properties, the value would be \$\$\$\$\$ each.

Respondent reconciled all three indicators of value to arrive at an estimated value for the units of \$\$\$\$\$ for the two four-plex properties, and \$\$\$\$\$ for the single four-plex properties. This would result in all three units being valued at a total of \$\$\$\$\$. Respondent did not request that the value be increased, but submitted that this supported the value determined by the Board of Equalization, and requested that the total value of \$\$\$\$\$ be sustained.

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."¹

¹ State Certification Prep Series, "Two-to-Four Unit Case Study: Residential (R₃)" Student Manual, (Chicago, IL: The Appraisal Institute, 1996), 13-14, 17-18.

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).

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 3 separate properties, or as an apartment complex operating as a single unit. Respondent ultimately agreed the properties could be valued as a single operating unit, and reduced the proposed values from a total of \$\$\$\$\$ to \$\$\$\$\$ after the 8% adjustment to the comparable sales approach. The Commission notes that applying the 8% adjustment to the total reconciled values will yield a value of \$\$\$\$\$.

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 three-bedroom apartments.

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%. 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%. The 7% was for a property owned by the owner of the subject property, and he said it was not correct and that he had not known anything about the questionnaire.

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%. Although the evidence on vacancy rate is not conclusive, and the Commission has determined that a vacancy rate of 5% would be appropriate for other apartment complexes from the CITY area that are under

appeal, there are extenuating circumstances in this case. Petitioner testified that the units are subject to flooding, and that the actual vacancy as of the lien date was 19%. The Commission believes that a 10% vacancy rate is appropriate.

Petitioner used operating expenses of \$\$\$\$ per unit. Respondent did not challenge the reserve for replacements of 3%, and Respondent also stipulated that a capitalization rate of %%% was reasonable. The Commission therefore finds that no additional adjustments are required for Petitioner's analysis.

Respondent produced evidence that was based upon the properties being operated as an economic unit as an apartment complex. The Respondent corroborated this use. Although Respondent recommended an adjustment to the appraisal presented at the hearing, there was no direct evidence to support a value based on the use of the subject property as a 16-unit apartment. Therefore the Commission finds the only evidence of value to be that submitted by the Petitioner.

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 \$\$\$\$\$. 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:

Appeal No. 04-1602

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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

GBD/ssw/04-1602.int

Appeal No. 04-1602

ADDENDUM

These are the parcels under this appeal:

#####-1

#####-2

#####-3