

04-1603
Locally Assessed Property Tax
Signed 08/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	Initial Hearing Decision and Order	
)		
Petitioner,	)	Appeal No.	04-1603
)		
v.	)	Parcel. No's	#####-1
	)		#####-2
)		
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, Witness
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 two separate parcels, one with 6 four-plexes and the other with a single four-plex, all under single ownership, or 28 total units, known as the (X).

The units are located in CITY 1, Utah. The buildings 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 \$\$\$\$ for the single building (parcel #####-2) and \$\$\$\$ for parcel

#####-1, which also equates to \$\$\$\$\$ per building. The total assessed value of both parcels is \$\$\$\$\$. The Board of Equalization (BOE) sustained those values. The assessor is requesting a total value of \$\$\$\$\$, \$\$\$\$\$ to be set on parcel #####-2 and \$\$\$\$\$ for parcel #####-1. Petitioner is seeking a value of \$\$\$\$\$ in total for all 7 buildings or 28 units combined.

A secondary issue in this matter is whether the single four-plex property should be valued as independently, or whether it should be included as part of a single complex with the six four-plexes on the other parcel. 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. 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 10-49 units 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 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. 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 separate valuation reports for each of the properties; one for the single unit parcel, and one for the 6-unit parcel. Each valuation 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) 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. No support for the GRM was provided in the report. However, in Appeal 04-1597 the assessor did provide a study for identical units that also used an 86 GRM and \$\$\$\$ rents.

Respondent’s justification for appraising the single unit independently of the other property with six units is that each property has its own legal description and therefore can be sold separately.

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 survey's reported expense rates from 23.5% to 48%.

Furthermore, with respect to the question of expenses, Respondent noted that in Appeal 04-1597, which involved ten identical buildings (40 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 2002 data for 10-49 units. This was later supplemented with 2004 data that used \$\$\$\$\$. In the other appeal data for 50 units or larger for 2002 was used. The Commission notes further that in this appeal Petitioner estimated market rent to be \$\$\$\$\$ per unit, while \$\$\$\$\$ was used for Appeal 04-1597.

PETITIONER REPRESENTATIVE 2, testifying on behalf of the owner, responded that the actual vacancy for similar units 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. The single lot, parcel #####-2, has legal access to a public street. However the access is not paved; it is landscaped and has storage shed sitting on it. Thus, there is no physical access from a public street. The covered parking for this property sits on the other, larger lot.

The Commission determines that although Respondent is technically correct in that parcel #####-2 could probably be sold legally as a separate four-plex, the issue of the physical access to parcel #####-2 would need to be addressed even before marketing the properties individually. The failure to account for this leads the Commission to conclude that the individual value would be lower than that proposed by the assessor. However, there is no substantive difference in Respondent's overall approach and value if the two parcels are considered as one economic unit.

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, and therefore 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. The rent used by Petitioner was based on a single lease for the subject property. It was at the low end of leases submitted by both parties. One of Petitioner’s comparable leases was for an adjacent property in appeal 04-1597. It was for \$\$\$\$ and was bracketed by leases submitted by both parties. The Commission determines \$\$\$\$ 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 \$\$\$\$\$. 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 use of a GRM to value apartments of this size is highly speculative. However, Petitioner offered no material criticism to the Respondent’s sales comparison analysis. In examining this approach, the Commission believes the sales price per unit is a more reliable technique than price per building area or room. This is the technique given most weight by the assessor, as well, in the comparable sales approach. Applying the assessor’s sales price per unit of \$\$\$\$ to 28 units yields a value \$\$\$\$\$.

The Commission finds that Petitioner’s income approach, as adjusted by the Commission, and Respondent’s comparable sales approach using the price per unit technique to be somewhat reliable. Thus the range of probable values is \$\$\$\$\$, based on Petitioner’s income approach, as adjusted by the Commission, to \$\$\$\$\$, based on the Respondent’s comparable sales approach applied to both parcels as a single complex. The Commission finds that neither approach to value demonstrates a compelling reason to support one over the other. The Respondent’s comparable sales approach appears to be reasonable.

On the other hand, however, the Commission believes an income approach is appropriate for an apartment complex. 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

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

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner