

05-0172
Locally Assessed Property Tax
Signed 12/23/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0172
v.)		
	)	Parcel No.	#####-1
BOARD OF EQUALIZATION	)		#####-2
OF DAVIS COUNTY,	)	Tax Type:	Property Tax/Locally Assessed
STATE OF UTAH,	)	Tax Year:	2004
)		
Respondent.	)	Judge:	Chapman

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
 PETITIONER REPRESENTATIVE, Representative
For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Assessor
 RESPONDENT REPRESENTATIVE 2, for the Davis County Assessor's Office
 RESPONDENT REPRESENTATIVE 3, for the Davis County Assessor's Office

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 June 20, 2005. Judge Davis, who presided at the hearing on behalf of the Commission, retired prior to the issuance of a decision. For this reason, Judge Kerry R. Chapman has been asked to review the information provided by both parties at the Initial Hearing, as well as Judge Davis's notes concerning the hearing, and recommend the following decision.

At issue is the fair market value of the subject property as of January 1, 2004. The subject property is the PARK 1 mobile home park. It is comprised of two parcels of land that measure approximately 11.07 acres in size and is located in CITY 1, Davis County, Utah. The park was built in 1964 and contains 113 mobile home pads, one of which is used to house the park manager.¹ The 112 mobile home pads that are rented are a mix of 14 double-wide spaces and 98 single-wide spaces (89% single-wide spaces).

For the 2004 tax year, the Davis County Assessor's Office assessed Parcel No. #####-1 at \$\$\$\$\$ and Parcel No. #####-2 at \$\$\$\$\$, for a total economic unit value of \$\$\$\$\$ (approximately \$\$\$\$\$ per pad). The Davis County Board of Equalization ("County BOE") reduced the value of the economic unit to \$\$\$\$\$ (\$\$\$\$\$ and \$\$\$\$\$ for the two parcels, respectively), which equates to approximately \$\$\$\$\$ per mobile home pad for 112 pads and \$\$\$\$\$ for 113 pads.

I. Income Approach

Petitioner's Evidence. PETITIONER REPRESENTATIVE submits an income approach to estimate the fair market value of the economic unit at \$\$\$\$\$ as of the lien date. For her approach, she submits a rent roll that shows that most of the subject's pads rent for \$\$\$\$\$, with approximately 10 pads renting for \$\$\$\$\$ a month. She estimates the subject to have a PGI of \$\$\$\$\$, which would equate to \$\$\$\$\$ for each of the 112 rentable pads per month. Accordingly, PETITIONER REPRESENTATIVE'S PGI does not equate to the PGI produced from the actual rent roll. A PGI based on the actual rents of \$\$\$\$\$ per each of the 112 rentable pads (90% of pads at \$\$\$\$\$ per month and 10% at \$\$\$\$\$ per month) is approximately \$\$\$\$\$.

Testimony was proffered that the subject was approximately 22% vacant as of the lien date. Because the \$\$\$\$\$ PGI used by PETITIONER REPRESENTATIVE in her income approach is approximately

¹ The expenses incurred by the Petitioner, plus the fact that he "carries some contracts," suggests that the Petitioner may own some of the mobile homes located on the subject property. However, any such mobile homes and their value are not at issue in this appeal.

20% below the \$\$\$\$\$ PGI established with actual rents, the Commission assumes that PETITIONER REPRESENTATIVE'S income of \$\$\$\$\$ is the EGI that results after the actual vacancies of approximately 22% are deducted from actual PGI. Although 22% may be the actual vacancy rate as of the lien date, the Petitioner did not submit information about long-term trends so that the Commission would know whether a 22% income loss would be experienced into perpetuity, as PETITIONER REPRESENTATIVE has apparently concluded, or whether vacancy as of the lien date is extraordinary and should be considered a short-term loss until the market stabilizes at the lower vacancy rate.

From the \$\$\$\$\$ actual EGI, PETITIONER REPRESENTATIVE deducted 2003 "actual" expenses of \$\$\$\$\$ (after loan expenses and some of the other inappropriate expenses were subtracted). PETITIONER REPRESENTATIVE also deducted a 3% reserves expense (\$\$\$\$\$) from EGI to estimate the annual costs associated with capital improvements. Actual expense reports for the three years prior to the lien date were submitted to verify the expense deductions. The actual expenses for the subject property, after appropriate deductions,² for the three years on which information was submitted are \$\$\$\$\$ for 2003, \$\$\$\$\$ for 2002, and \$\$\$\$\$ for 2001. The Commission also notes that an \$\$\$\$\$ capital expenditure occurred in 2002. However, some of the other expenses such as wages and federal express expenses may be related to management not only of the real property at issue, but also of the mobile homes that are not at issue or of the entire business of which the real property is only a part. Without additional information, it is difficult to determine which of these expenses are actually related to the real property at issue in this appeal.

² The expenses appear to include some associated with mobile homes that, as explained earlier, are not at issue in this appeal. Without additional explanation, expenses associated with the mobile homes should be excluded, such as those described as "flooring," "mobile-refurbishment," "mobile-demolition," "taxes-personal property tax." Other expenses that appear inappropriate, without explanation, to value the real property at issue are described as "capital expenditures," "loan expenses," "mortgage collection payments," and "travel expenses."

Once PETITIONER REPRESENTATIVE determined an NOI of \$\$\$\$\$ she applied a capitalization rate of %%% to estimate a total value of \$\$\$\$\$ for the economic unit. The Commission is not convinced by the Petitioner's income approach because the PETITIONER REPRESENTATIVE has not shown that the subject property had experienced historical vacancy of 22% and would experience this rate of vacancy into the foreseeable future. Even though the Petitioner shows that the owner of the PARK 2 Mobile Home Park estimates its vacancies at 25% since mid-2002, RESPONDENT REPRESENTATIVE 3 performed a telephone survey of "various mobile home parks within Davis County" and determined that typical vacancy and collection losses were less than 10%. Were the Petitioner able to show that the subject's vacancy rate at 22% is perpetual, PETITIONER REPRESENTATIVE'S income approach would be more convincing. Furthermore, the Petitioner's expenses, as listed, were not confirmed to apply only to the real property at issue. For these reasons, the Commission finds the Petitioner's income approach unpersuasive.

Assessor's Evidence. Davis County submits an appraisal prepared by RESPONDENT REPRESENTATIVE 3 of the Davis County Assessor's Office. RESPONDENT REPRESENTATIVE 3 estimates the value of the economic unit at \$\$\$\$\$, which equates to \$\$\$\$\$ per pad. The Davis County Assessor's Office recommends that the value of the economic unit be increased from the \$\$\$\$\$, as set by the Davis County BOE, to the \$\$\$\$\$ value that RESPONDENT REPRESENTATIVE 3 estimates.

For his income approach, RESPONDENT REPRESENTATIVE 3 estimated the income of all 113 pads. Because one of pads is used by the manager and generates no income, it may need to be excluded from an income analysis unless the expense amount is increased to account for this specific expense. RESPONDENT REPRESENTATIVE 3's estimates that each pad would generate \$\$\$\$\$ per year (\$\$\$\$\$ per month), which based on the actual rent roll appears to be slightly above the average \$\$\$\$\$ per month that the pads rent for.

In addition, RESPONDENT REPRESENTATIVE 3 estimates the perpetual vacancy at only 10% and does not include any short-term rent loss in his analysis, even though the subject's vacancy rate was 22% as of the lien date. This mistake leads to an overestimation of the subject's fair market value with the income approach because no informed purchaser would pay a price for the subject property based on an income approach calculated with a 10% rent loss when actual losses were known to be higher on a short-term or long-term basis. Accordingly, RESPONDENT REPRESENTATIVE 3's analysis requires some adjustment to account for this omission.

RESPONDENT REPRESENTATIVE 3 next estimates expenses to be 35% of his EGI or \$\$\$\$ per pad, which equates to \$\$\$\$ for the 112 rentable pads. This amount of expenses may be low, given the actual expenses incurred by the property, as discussed earlier. Although RESPONDENT REPRESENTATIVE 3 explains in his appraisal that his conversations with other real estate professionals led him to conclude that this is a "market" expense percentage, there is no evidence to show if other mobile home parks actually experience an expense ratio this low. The Petitioner, on the other hand, shows several sales where the expense ratio is estimated to be, at a minimum, 40%. The Petitioner also provided actual expenses for two other parks whose expense rates have exceeded 40%. Without additional information, the Commission finds that the Petitioner's expense ratio evidence, which shows an expense ratio of at least 40%, is more persuasive than the County's 35% expense ratio, which is not supported by evidence. To his NOI, RESPONDENT REPRESENTATIVE 3 applies a capitalization rate of %%% to arrive at a \$\$\$\$ estimate of value using the income approach.³

³ Although RESPONDENT REPRESENTATIVE 3's list of capitalization rates includes ones for a number of adult retirement communities ("ARCs"), which may have a different market from ordinary mobile home parks, the non-ARC capitalization rates range from %%% to %%%. The %%% rate for a 2004 sale is the one that occurred nearest the lien date.

If the Commission takes actual PGI of \$\$\$\$\$, assumes that stabilized vacancy is 10%, deducts actual 2003 expenses of \$\$\$\$\$, deducts \$\$\$\$\$ of reserves expense, and capitalizes the resulting NOI at %%%%, the resulting value is only \$\$\$\$\$. Furthermore, a deduction of short-term rent loss would reduce the value even more. For example, if the vacancy rate remains at 22% for all of 2004, the excess rent loss for just one year is 12% of PGI (12% x \$\$\$\$\$), or \$\$\$\$\$. Deducting this short-term rent loss from the \$\$\$\$\$ value would result in a final estimate of \$\$\$\$\$ for the economic unit using these factors. However, the Commission is concerned that this approach may overestimate expenses, without additional information.

If the Commission were to accept RESPONDENT REPRESENTATIVE 3's expense estimate of \$\$\$\$\$ per rentable pad (35% expense rate) and inserts it into the formula described in the prior paragraph⁴, the resulting value for the economic unit is \$\$\$\$\$, which is less than 1% higher than the value set by the County BOE. With these few corrections, RESPONDENT REPRESENTATIVE 3's own income approach supports the County BOE's value of \$\$\$\$\$ for the economic unit. For this reason, the income potential of the subject property does not appear sufficient to warrant an increase in the value set by the County BOE.

However, if the Commission were to consider all 113 pads to be rentable at the actual rental rate of \$\$\$\$\$ per pad per month (PGI of \$\$\$\$\$) and to use the County's 10% vacancy rate, a 40% expense deduction, the County's %%% capitalization rate, and a short-term deduction of rent loss based on 12% of PGI (one year of extraordinary vacancy), the resulting value for the economic unit would be \$\$\$\$\$ (approximately \$\$\$\$\$ per pad), which is approximately 5% lower than the value set by the County BOE. Because these various income approach elements are the ones best supported by the evidence provided at the

⁴ The formula would consist of a \$\$\$\$\$ PGI, a 10% long-term vacancy rate, expense estimate of \$\$\$\$\$ (112 pads x \$\$\$\$\$) instead of the actual expenses, an %%% capitalization rate, and a short-term rent loss of \$\$\$\$\$ to account for extraordinary vacancy for one year.

Initial Hearing, the Commission believes that an income approach derived from them best estimates the value of the subject property using an income approach.

II. Market Approach

Petitioner's Evidence. PETITIONER REPRESENTATIVE presents some evidence of mobile home parks selling prices in the early and mid-1990's. Although this information is too old to be persuasive, PETITIONER REPRESENTATIVE also submits information about two sales of mobile home parks in Davis County in 2002. First, the PARK 2 mobile home park sold for \$\$\$\$\$ in January 2002. The park was built in 1973 and contains 86 mobile home pads (79% single-wide spaces). The pads rent from \$\$\$\$\$ to \$\$\$\$\$ a piece, which is near the prices at which the subject rents. This park, like the subject, has experienced high vacancy rates. Since mid-2002, this park has experienced a vacancy rate of approximately 25%. This park sold for \$\$\$\$\$ per pad, which is near the price at which the subject is currently valued by the County BOE.

The Petitioner also submits the sale of the PARK 3 mobile home park in CITY 2 as a comparable. The 62-pad (58% single-wide spaces) mobile home park was built in 1975 and sold for \$\$\$\$\$ in September 2002, which equates to approximately \$\$\$\$\$ per pad. These pads rent from \$\$\$\$\$ to \$\$\$\$\$ per pad, which also approximates the prices at which the subject rents.

Because these comparables are newer than the subject and have a greater percentage of double-wide spaces, one could conclude that the subject is inferior to these parks and might sell for a lesser amount per pad. However, it appears that the subject rents for a similar price per pad. Based on this information, the Commission would conclude that the subject would sell between \$\$\$\$\$ and \$\$\$\$\$ per pad, which establishes a value range between \$\$\$\$\$ and \$\$\$\$\$ for the economic unit. The higher end of this range is only one-half of one percent lower than the value set by the County BOE.

Assessor's Evidence. In his appraisal, RESPONDENT REPRESENTATIVE 3 has compiled four comparable sales in Davis County that all sold between \$\$\$\$\$ and \$\$\$\$\$ per pad. Two of the comparables sold more than two years prior to the lien date, however. As a whole, these parks appear superior to the subject property, as these comparables have clubhouses, swimming pools, recreation areas such as basketball courts and playgrounds, and maintenance shops, amenities that the subject property appears to lack. From these comparables, RESPONDENT REPRESENTATIVE 3 has concluded that the subject has a value of \$\$\$\$\$ per pad. The Commission is concerned why RESPONDENT REPRESENTATIVE 3 has not considered the two sales provided by PETITIONER REPRESENTATIVE, one of which is in the same city and both of which occurred closer to the lien date than two of his sales. The Commission is also concerned that RESPONDENT REPRESENTATIVE 3 did not address the high vacancy rate experienced by the subject in comparison to his comparables' vacancy rates. PETITIONER REPRESENTATIVE provides a rent roll of one of RESPONDENT REPRESENTATIVE 3's comparables (PARK 4) that shows that that park only has three vacant lots.

Based on the market information provide by both parties, the Commission finds it more credible that the subject would sell at a price nearer those parks with similar vacancy problems, such as the PARK 2 park at \$\$\$\$\$ per pad, than the parks with superior amenities and lesser vacancies, such as those used by RESPONDENT REPRESENTATIVE 3.

In summary, the information provided by the parties does not suggest that the value determined by the County BOE is too low, as the County contends. If anything, the information suggests that the value may be high. However, the Commission is reluctant to lower the value based on the income approach derived earlier because of the lack of information provided by the Petitioner concerning its expenses and historical vacancies. Without such information, the Commission finds the value at which PETITIONER

REPRESENTATIVE'S two comparable sales sold to be the most convincing evidence of the subject's fair market value. In particular, the Commission particularly finds the PARK 2 mobile home park to appear similar to the subject in location, percentage of single-wide spaces, amenities and vacancy rates. Given these similarities, the Commission finds a price of \$\$\$\$\$ per pad to be the most persuasive evidence of the subject's value. As 113 pads at \$\$\$\$\$ per pad equates to \$\$\$\$\$ (which is only one-half on one percent lower than the value established by the County BOE), the Commission finds that neither party has shown the County BOE value to be incorrect. Accordingly, the Commission sustains the County BOE value.

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

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1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

Neither party has submitted sufficient evidence to show that the fair market value, as established by the County BOE for the subject property, is incorrect. Based on the evidence proffered at the Initial Hearing, the Commission finds that the fair market value of the economic unit is \$\$\$\$\$, as established by the County BOE.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's request to lower the value of the subject properties and the County Assessor's request to raise their values. The Commission finds that fair market value of the two subject properties, as set by the County BOE, is reasonable. Accordingly, for the 2004 tax year, the values of Parcel No. #####-1 and Parcel No. #####-2 are sustained at those values set by the County BOE. 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.

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Kerry R. Chapman
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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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