

05-0381
Locally Assessed Property Tax
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-0381
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
DAVIS COUNTY, UTAH)	Tax Year: 2004
)	Judge: Phan
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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
 PETITIONER REPRESENTATIVE 2
 PETITIONER REPRESENTATIVE 3
For Respondent: RESPONDENT REPRESENTATIVE 1, Appraisal Supervisor
 RESPONDENT REPRESENTATIVE 2, Appraiser, Davis County
 Assessor’s Office, Appraiser, RESPONDENT REPRESENTATIVE
 3

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing on November August 3, 2005. Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2004. The subject property is

parcel no. ##### and is located at ADDRESS, CITY, Utah. The Davis County Assessor had originally set the value of the subject property, as of the lien date, at \$\$\$\$\$. The County Board of Equalization reduced the value to \$\$\$\$\$.

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).)

In assessing the fair market value of real property that is subject to a low-income housing covenant, a county assessor shall include as part of the assessment any effects the low-income housing covenant may have on the fair market value of the real property. (Utah Code Ann. 59-2-301.3(2).)

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).

DISCUSSION

The subject property consists of 6.26 acres of land and is improved with a 156-unit apartment complex. Of the total units 40 are one-bedroom and 84 are two-bedroom units. The complex was built in 2002 and is low-income senior housing subject to the low income housing covenants. The property is marketed to residents 55 years and older as an active adult community. It has amenities that include indoor community areas and a fitness center, as well as

an outdoor swimming pool, spa, walking trails and a picnic/barbeque area. There are also elevators for the second-story units. As part of the low-income covenants Petitioner is limited in the amount of rent it may charge the tenants, as well as the fact that it may rent only to tenants who qualify under the low-income guidelines and for this project are 55 or older. Petitioner incurs additional expenses as it must have prepared audited financial statements annually and meet certain quality and condition guidelines. However, Petitioners acknowledged that expenses for the low income “senior” tenants are lower than for other typical low income projects, as the senior tenants default less and cause less damage to the units.

The property was relatively new on the lien date and was still in the initial lease-up phase. It was approximately 46% vacant at the end of 2003. Petitioner expected that it would lease up to typical levels within a year.

Petitioner argues that the County misinterpreted Utah Code 59-2-301.3 in determining the value for the subject property. The Hearing Officer for the County Board of Equalization indicated in his decision that the “only factor the assessor must consider would be the impact on rental rates the low-income housing covenant would create.” The Hearing Officer went on to indicate that “the assessor is not bound by statute to use both the property’s actual income and actual expenses, if those expenses appear to be excessive when compared to the market, and would from an equitable assessment aspect, create an unfair advantage over managers and owner of similar properties.”

Petitioner did not provide an appraisal in this matter. Petitioner’s representatives relied on Petitioner’s financial statement for the 2003. The financial statements also included information compiled from July 31, 2000 through December 31, 2002, although the project was not completed until 2002. Petitioner’s representatives argued that if they replaced in Respondent’s income approach only the expense factor of \$\$\$\$ per unit with the actual expenses

of \$\$\$\$\$ per unit, the indicated value would be reduced to \$\$\$\$\$. The information from Petitioner was insufficient to reach a number for “normalized expenses.” Petitioner had started leasing the property in 2002 and it still had substantial vacancy in 2003. There is insufficient evidence for the Commission to determine if the expenses incurred in this lease up period would be expected to continue on year after year.

The State Tax Commission interprets Utah Code Sec. 59-2-301.3 to require consideration of both the normalized actual income stream and the normalized expenses that result from the low income-housing contract. However, if the expenses are higher for a temporary period due to the need for advertising or promotions that is not an ongoing issue, this would need to be removed to obtain a normalized expense rate that would be expected to be incurred annually for purposes of capitalization. Additionally, the Commission would consider whether expenses were excessive compared to the “market,” but considers the “market” to be other similar low-income housing projects. The Commission would note that as far as expenses the senior low-income projects might be a different market group from the typical low-income projects. However, there may still be additional expenses incurred in operating these type of properties and the statute requires that the assessor include as part of the assessment “any effect the low-income housing covenant may have” on the value. This means that the lease rate, vacancy issues and the expenses as affected by the low-income housing covenant must be considered.

However, in this matter, Petitioner has not provided sufficient information to determine a normalized expense rate based on actual expenses or a market expense rate from other similar senior low-income housing.

Respondent did not submit an appraisal. An income approach was submitted that indicated a value of \$\$\$\$\$ and the record from the County Board of Equalization hearing was

submitted which supported the value set by the Board of Equalization of \$\$\$\$\$. A major difference between the two was the allowance made by the Hearing Officer at the County Board of Equalization for rent loss based on the fact that as of the lien date the property had substantial vacancy due to the fact that it was still in the “lease-up” phase.

The value set by the County Board of Equalization has the presumption of correctness. Additionally, the approach allowing for rent loss is reasonable in this instance. If Petitioner were to provide evidence of a normalized actual expense rate or establish a market rent rate for similar senior low-income housing projects that should be considered in the value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2004, is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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.

Jane Phan
Administrative Law Judge

Appeal No. 05-0381

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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

JKP/05-0381.int.doc