

05-0390
Locally Assessed Property Tax
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-0390
)	Parcel Nos. #####-1, #####-2
v.)	#####-3
)	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.

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

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 property subject to this appeal consists of parcel nos. #####-1, #####-2 and #####-3, and is located at ADDRESS 1 & ADDRESS 2, CITY, Davis County, Utah. The Davis County Assessor had originally set the value of the subject property, as of the lien date at \$\$\$\$ and the County Board of Equalization sustained the value.

The subject property consists of a total 6.64 acres of land and is improved with a 156-unit apartment complex. A fourth parcel, parcel no. #####-4, is part of the economic unit but

was not appealed and has been valued by the County at \$\$\$\$\$. Of the total units, 46 are four bedroom, 72 are three bedroom and 38 are two bedroom units.

The property is a low-income housing project subject to the low income housing covenants. As part of this Petitioner is limited in the amount of rent it may charge the tenants and incurs additional expenses. For example Petitioner must have prepared audited financial statements annually. The Utah Housing Authority also inspects the property regularly and requires that Petitioner maintains a certain quality of condition in the building that means the units must be maintained and repaired to that standard. Due to the low-income nature of tenants there are higher rates of default. Additionally this particular unit had a high vacancy rate on the lien date at issue. Petitioner attributed this to two factors. First a newer, low-income project had been constructed across the street from the subject creating competition. Second, the low interest rate on mortgages had enabled more of those in the low-income categories to purchase residences.

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 years 2002 and 2003 that showed the actual expenses. They 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.” The Commission notes that the expenses for 2002 were lower than for 2003 and there was a large increase in the category for advertising, promotion and cable.

The 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 there is a temporary jump in expenses one year due to the need for extra 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 low-income housing projects. There are 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.

Although the decision from the County Board of Equalization indicates that actual additional expenses relating to the low-income housing need not be considered, this is more a conceptual difference more than a numerical difference in terms of the assessed value as the County Board of Equalization did not adopt the higher value calculated on that basis. Additionally, in the appraisal submitted by Respondent at the Initial Hearing before the Tax Commission, the appraiser made an analysis of the appropriate expenses and did give consideration to the fact that actual expenses were higher.

Additionally the appraiser noted that for 2003 the expenses were higher than for 2002 and analyzed whether they may have been some extraordinary items that were included in

2003 that should not be capitalized. Although he compared these properties to projects without the low-income housing covenants when the commission would prefer to see expenses based on an analysis of properties subject to the same covenants, in essence the appraiser was attempting to get to a normalized rate taking into account the higher costs for the subject. The Commission notes that he averaged the actual rental income for both years to get the EGI, but used an amount for expenses equal to the lower expenses incurred in 2002, which resulted in a value of \$\$\$\$\$.

If, however, expenses for both 2002 and 2003 were averaged in a manner similar to the income, the resulting value in Respondent's appraisal would be significantly less, at approximately \$\$\$\$\$, but still higher than the value set by the County Board of Equalization. Although with only the two years of financial information Petitioner has not establishing a normalized expense rate, this averaging does favor the fact that expenses for 2003 were higher, ergo a lower market value, and serves to support the County Board of Equalization 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 as follows:

Parcel No. #####-1	\$\$\$\$\$
Parcel No. #####-2	\$\$\$\$\$
Parcel No. #####-3	\$\$\$\$\$

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

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