

05-0534
Locally Assessed Property Tax
Signed 02/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDING OF FACT AND
)	CONCLUSIONS OF LAW
Petitioner)	
v.)	Appeal No. 05-0534
)	Parcel No. #####
BOARD OF EQUALIZATION OF)	Tax Type: Property Tax/Locally
SALT LAKE COUNTY, UTAH)	Assessed
)	Tax Year: 2004
Respondent.)	Judge: Rees

Presiding:

Commissioner Palmer DePaulis
Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Petitioner's legal counsel, and
 PETITIONER REPRESENTATIVE 2, Appraiser
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Assessor's Office

CASE SUMMARY

The subject property is a three bedroom condominium located at ADDRESS in CITY. The County Assessor valued this property at \$\$\$\$\$ for tax year 2004. After a hearing at the County level, the Board of Equalization affirmed that value. The parties participated in a mediation conference at the Tax Commission, but were unable to come to an agreement that resolved the issues. Therefore, the matter was set for a Formal Hearing, which was held on December 1, 2005. The parties appeared at that hearing and each presented appraisals and other evidence in support of their positions.

Because the appraisers disagreed about the square footage of the condominium, they were directed to meet at the property to remeasure the gross living space, and to submit that information in a post-hearing filing. The parties met, but were still unable to reach agreement as to the area measurements, so they made separate submissions. In Petitioner's post-hearing filing, the

appraiser confirmed his calculation of gross living area to be approximately 2,664 sq. ft. (rounded).

The Respondent's appraiser made some interior measurements, and compared those measurements to the building plan or "survey map" to confirm that the building plan is correct. On that basis, Respondent's appraiser stands by her initial statement that the gross living area is 3,058 sq. ft.

FINDINGS OF FACT

Based on the evidence presented, the Commission enters the following Findings of Fact:

1. The tax at issue is the ad valorem property tax assessed by the Salt Lake County Assessor as of January 1, 2004.
2. The subject property is a 20 year old condominium located on the (X) floor of the COMPLEX at ADDRESS, CITY.
3. The subject condominium unit has three bedrooms, two and a half baths, and is of average quality for the complex.
4. The Petitioner submitted an appraisal prepared by a professional appraiser that indicates a market value of \$\$\$\$\$.
5. The County submitted an appraisal prepared by a staff appraiser that indicates a market value of \$\$\$\$\$.
6. Both appraisers found ample sales within the COMPLEX to establish a range of actual sales prices of smaller units between \$\$\$\$\$ to \$\$\$\$\$.
 - a. The Petitioner's appraiser made adjustments to the comparables to account for differences in gross living area. He calculated his gross living adjustments at \$\$\$\$\$/sq. ft. His comparable sales in the same complex adjusted to \$\$\$\$\$ and \$\$\$\$\$. His third comparable, a (X) at (X), sold for \$\$\$\$\$ and was adjusted to \$\$\$\$\$. On that basis, Petitioner's appraisal estimates the market value of the

subject property to be \$\$\$\$\$.

- b. The Respondent's appraiser also made adjustments to account for differences between the comparables and the subject property. The appraiser adjusted the gross living area at a rate of \$\$\$\$\$/sq. ft. This appraiser also made other adjustments, including adjustments for time of sale, floor location, and view. The Respondent's adjusted sales in the same complex range from \$\$\$\$\$ to \$\$\$\$\$. On that basis, the Respondent's appraiser estimated the value of the subject property to be \$\$\$\$\$.
7. In preparing his appraisal report, Petitioner's appraiser measured the property and calculated the gross living area at 2,664 sq. ft., including two enclosed balcony patios. Respondent's appraiser relied primarily on the building "survey map" to conclude a gross living area of 3,058 sq. ft., including two enclosed balcony patios. The parties were directed to return to the premise together after the hearing to remeasure the gross living area. The post-hearing affidavits submitted indicate that neither party completely remeasured the premise as directed. Each appraiser reaffirmed his or her original calculation of gross living area.

APPLICABLE LAW

With regard to an appeal of the assessed value, Petitioner has the burden to establish that the market value of the subject property is other than that as determined by Respondent. Utah Admin. R. R861-1A-7(G). 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).

ISSUES AND CONCLUSIONS

The overall issue here is the market value of the subject property. The differences of

opinions stated by the appraisers stem primarily from the differences in the rates of adjustment for gross living area and the actual gross living area of the subject. The Commission is not satisfied that either appraisal, by itself, reliably reflects the market value of the subject property. Relying on information found in the appraisals and the post-hearing affidavits of PETITIONER REPRESENTATIVE 2 and RESPONDENT REPRESENTATIVE, the Commission concludes the following:

1. The appraisers disagreed as to the gross living area of the subject property. In the post-hearing meeting, neither appraiser remeasured the premise as they had been directed to do. According to the affidavits filed, they reviewed some interior measurements and compared them to the building floor plan renderings. PETITIONER REPRESENTATIVE 2 did not agree that the renderings accurately represent the actual unit and the RESPONDENT REPRESENTATIVE restated her reliance on the measurements in the building plan. It is impossible for the Commission to determine the actual gross living space of the unit. However, because PETITIONER REPRESENTATIVE 2 actually measured the complete premise for the purpose of preparing the appraisal that he submitted at hearing, we accept his figure of 2,664 sq. ft. as the best evidence of gross living area.
2. The Commission is not satisfied that either party used an appropriate rate of adjustment for the gross living area. The Petitioner's appraiser used \$\$\$\$\$/sq. ft. Although she claimed that this adjustment was based on paired sales analysis, she offered no evidentiary support for that figure. In the Commission's experience, \$\$\$\$\$/sq. ft. is a very high adjustment rate for a residential property of this type. On the other hand, PETITIONER REPRESENTATIVE 2 used \$\$\$\$\$/sq. ft. to adjust for gross living area. Not only is this adjustment low, in the Commission's experience, but PETITIONER REPRESENTATIVE 2 also testified that this adjustment was low in comparison with the appraisal guidelines he

uses.

3. Because the adjustment rates used may result in either too aggressive or too conservative adjusted sales prices, the Commission has examined other evidence submitted and has determined that the weight of the evidence supports the Petitioner's estimate of value.

DISCUSSION

Both parties in this case presented appraisals prepared by professional appraisers. The differences between the appraisers' opinions of value primarily involve the gross living area of the subject property and the rates of adjustments made to comparables in the appraisals. Regarding the gross living area, the Petitioner questioned whether the enclosed patios should be included in the gross living area of the condominium, but both appraisers included them as gross living area in their appraisal reports, so we set that aside as an issue.

Petitioner's appraiser measured the condominium throughout and reported its gross living area to be 2,664 (rounded). Respondent's appraiser relied on the building floor plan renderings, or Survey Map, to conclude that the gross living area is 3,058 sq. ft. Due to the significant difference of opinion about the gross living area, the parties were directed to meet at the property and measure the property again. The parties met as instructed. It appears from the affidavits submitted that they failed to remeasure the unit as instructed. Instead, they each submitted post-hearing affidavits to support their initial calculations and methodology for arriving at those calculations. On this issue, the Commission gives the most weight to the evidence that appears to be the most reliable. In this case, the best evidence of gross living area is the PETITIONER REPRESENTATIVE 2's testimony at the hearing that he actually measured the entire unit.

The Respondent states that PETITIONER REPRESENTATIVE 2's methodology does not account for the width of the exterior walls. Even if that is so, the walls do not explain a difference of roughly 400 sq. ft. between PETITIONER REPRESENTATIVE 2's and RESPONDENT REPRESENTATIVE'S determination of gross living area.

Respondent states that the County generally relies on building plans to derive the gross living area of condominium units like the subject. Of course, the building plans may be the best evidence available to the Assessor, and reliance on the plans is reasonable in the absence of better evidence. However, it is not outside the realm of possibility that the builder varied from the plans, and we consider the actual measurements of the premise to be a better indication of the condominium's gross living area than the plans. Therefore, for the purposes of this decision, we accept the measurements of the Petitioner's appraiser and find that the gross living area is 2,664 sq. ft.¹

The second major issue concerns the per sq. ft. adjustments used by the appraisers to calculate the gross living area adjustments that appear in their appraisal reports. The County's appraiser used \$\$\$\$\$/sq. ft. and testified that she relied on paired sales data to derive that adjustment. She offered no data or study to support adjustments of this magnitude and the magnitude of this adjustment seems extreme for a residential property of this nature. Even if \$\$\$\$\$/sq. ft. is a reasonable adjustment for the interior of this unit, one would expect some differential in the adjustment for enclosed patios. The enclosed patios may supplement the living space, but they do not have heat, air conditioning, or an interior finish that is similar to the interior of the unit and they do not have the same utility as the interior of the unit. The Commission is not persuaded that \$\$\$\$\$/sq. ft. is a reasonable rate of adjustment without further corroborative evidence.

The Petitioner's appraiser used \$\$\$\$\$/sq. ft. for his adjustments. At the hearing, he testified that the mortgage industry guidelines generally suggest a \$\$\$\$\$/sq. ft. adjustment for residential properties valued at or below \$\$\$\$\$, but something more than \$\$\$\$\$/sq. ft. for properties in the \$\$\$\$\$+ range. The appraiser's testimony, then, suggests that his adjustments are

¹ Petitioner's submitted the post-hearing affidavit of WITNESS. This witness did not appear at the hearing and was not subject to examination by the Respondent. Therefore, her testimony is stricken.

very conservative. On the basis of this adjustment rate, PETITIONER REPRESENTATIVE 2 estimated the value of the subject property to be \$\$\$\$ as of the 2004 lien date. The Commission, however, is not persuaded that \$\$\$\$ /sq. ft. is a reasonable rate of adjustment and cannot accept the Petitioner's estimate of value without further corroborative evidence.

Resorting to the other information available in the record, the Commission notes that the comparables in the same building sold in a range of \$\$\$\$-\$\$\$\$ /sq. ft. It appears that the smaller the unit, the higher the per-square-foot price:

1. Petitioner's comparable #1 - 2,475 sq. ft. sold for \$\$\$\$ (rounded), or \$\$\$\$ /sq. ft.
2. Petitioner's comparable #2 - 2,080 sq. ft. sold for \$\$\$\$\$, or \$\$\$\$ /sq. ft.
3. Respondent's #1 - 2,290 sq. ft. sold for \$\$\$\$ (rounded), or \$\$\$\$ /sq. ft.
4. Respondent's #2 - 2,210 sq. ft. sold for \$\$\$\$\$, or \$\$\$\$ /sq. ft.
5. Respondent's #3 - 1,625 sq. ft. sold for \$\$\$\$\$, or \$\$\$\$ /sq. ft.

We note that Petitioner's comparable #1 is that same unit as Respondent's comparable #1, but there is a discrepancy in the square footage reported by the appraisers. The Commission does not know which figure is correct. Considering them together, \$\$\$\$ /sq. ft. is within range. Applying \$\$\$\$ /sq. ft. against 2,664 sq. ft. results in an estimated value of \$\$\$\$.

Curious as to how the Respondent's adjusted sales prices would change if the County's appraisal were corrected for gross living area, the Commission recalculated the adjusted sales prices of the County's comparables. Correcting for the gross living area of the subject, but using the appraiser's \$\$\$\$ /sq. ft. adjustment, the approximate changes to the adjusted values are as follows:

1. A 2,290 sq. ft. condominium sold for \$\$\$\$\$. The appraiser calculated the adjusted sales price to be \$\$\$\$\$. Correcting only for the gross living area, the adjustment at \$\$\$\$ /sq. ft. would be \$\$\$\$ $((2,664-2,290) \times \$\$\$)$ instead of \$\$\$\$\$. That would reduce the overall

adjusted value by \$\$\$\$ (\$\$\$\$ - \$\$\$) from \$\$\$\$ to \$\$\$\$.

2. A 2,210 sq. ft. condominium sold for \$. The appraiser calculated the adjusted sales price to be \$. Correcting only for the gross living area, the adjustment at \$/sq. ft. would be \$ ((2,664-2210) x \$) instead of \$. That would reduce the overall adjusted value by \$ (\$-\$) from \$ to \$.

3. A 1,625 sq. ft. condominium sold for \$. The appraiser calculated the adjusted sales price to be \$. Correcting only for the gross living area, the adjustment at \$/sq. ft. would be \$ ((2,664-1,625) x \$) instead of \$. That would reduce the overall adjusted value by \$ (\$-\$) from \$ to \$.

This exercise indicates that the County's assessment of \$ is too high. Comparable #1, which both appraisers consider the strongest comparable, adjusts to \$ (rounded).

This perspective of the evidence weighs in favor of finding against the County's estimate of value. Additionally, the County's value of \$ is well outside the range of all sales in the building and \$ more than the actual sale price of unit ##### of the same building, which is the most comparable sale in terms of size, location and time. Therefore, we reject the Respondent's estimate of value.

The Petitioner's estimate of value appears to be a very conservative estimate and probably represents the low end of the market range for this property. However, the evidence weighs in favor of finding for the Petitioner.

DECISION

Based on the foregoing, the Commission finds that the fair market value for the subject property for tax year 2004 is \$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2006.

Irene Rees, 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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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