

05-0570
Locally Assessed Property Tax
Signed 09/28/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0570
	)	Parcel No.	#####
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION)		
OF SALT LAKE COUNTY,	)	Tax Year:	2004
STATE OF UTAH,)		
	)	Judge:	Rees
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 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:

Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, COMPANY, Representative
For Respondent: RESPONDENT REPRESENTATIVE, Salt Lake County Appraiser

STATEMENT OF THE CASE

On September 1, 2005 this matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5.

The subject property is a complex of luxury apartments on approximately 20 acres of land in Salt Lake County. Various sizes and styles of units are situated throughout the complex.

The County Assessor assessed the property at \$\$\$\$\$. Petitioner disputed the assessment and requested an adjustment to \$\$\$\$\$. The Board of Equalization denied the adjustment, and the Petitioner filed an appeal with the Tax Commission. The County Assessor submitted a letter to the Commission indicating

Appeal No. 05-0570

that the County would present evidence at hearing to increase the market value of the property above the initial assessment. However, the Assessor's representative stated at the hearing that the County asks the Tax Commission to sustain the original assessed value.

APPLICABLE LAW

1. Utah Code Ann. §59-2-1101(2) provides in relevant part as follows:

(2) The following property is exempt from taxation:

••••

(b) property owned by a non-profit entity which is used exclusively for religious, charitable, or educational purposes;

2. 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).

3. 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).

4. To prevail, the Petitioner must (1) demonstrate that the County's assessment was erroneous, and (2) provide the Commission with a sound evidentiary basis for granting the relief requested by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The parties agree as to the actual vacancy rates, ancillary income, reserves and expenses for this property. The County used %%% capitalization rate and Petitioner used %%%, but the parties

Appeal No. 05-0570

agreed the difference was insignificant and that the only matter at issue is the appropriate determination of potential gross income (“PGI”).

In calculating PGI, Respondent used all leases in place over the 12-month period prior to the lien date to calculate PGI. Petitioner objects to this method, stating that the actual leases in effect as of the lien date include older, above-market leases. Petitioner argues that use of the above-market leases distorts PGI and fails to adequately project the downward trend in rents for this property.

Petitioner claimed, and Respondent did not disagree, that this property is a unique, high-end or luxury apartment complex. Therefore, neither party offered market comparables against which to compare the actual rental rates of this property. Furthermore, Petitioner stated that high-end rentals struggle to command high rental prices during periods of low mortgage interest rates. Consequently, the rents for the subject units were reduced for leases signed in 2003 to stabilize the vacancy rate.

In support of Petitioner’s claim that the market for this property is softening, Petitioner’s representative presented a spreadsheet comparison of average 2003 rents, by unit type, to average 2002 rents. For instance, the actual 2002 leases for a one bedroom/one bath unit (identified as (X –1)) averaged \$\$\$\$\$ per month, but 2003 leases for these units averaged \$\$\$\$\$ per month. Petitioner’s complete comparison is summarized as follows:

Unit Type	Overall Average Based on Actual Leases	Average 2002 Lease Rate	Average 2003 Lease Rate
(X-1)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
(X-2)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
(X-3)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
(X-4)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
(X-5)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
(X-6)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Petitioner’s information seems to point to some softening in market rents for these apartments from 2002 to 2003. However, Petitioner’s selective use of 2003 average lease rates while, at the same

Appeal No. 05-0570

time, using actual vacancy rates, expenses, concessions, etc. raises questions. For instance, the reductions in rents beginning in 2003 were intended to impact vacancy rates, but Petitioner used actual vacancy rates, which are influenced by the 2002 rental rates, in calculating PGI. The income statement included in Petitioner's filing indicates concessions, but fails to segregate concessions attributable to 2003 leases from any concessions attributable to the aggregate of leases in place as of the lien date. In other words, from the information provided, the exact monetary impact of concessions offered along with 2003 leases is not clear.

The Commission does not necessarily disagree with Petitioner's position that above-market leases may distort the property's fair market value. However, the Commission disagrees with the selective use of 2003 leases absent some showing that actual vacancy rates, expenses need not be adjusted as well.

DECISION AND ORDER

On the basis of the foregoing, the Commission denies Petitioner's request for adjustment of the market value of the subject property. 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.

Appeal No. 05-0570

Irene Rees
Administrative Law Judge

Appeal No. 05-0570

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

IR/05-0570.ini