

05-1217 & 05-1218
Locally Assessed Property
Signed 10/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	Appeal Nos. 05-1217 & 05-1218
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel Nos: #####-1, #####-2
SALT LAKE COUNTY,)	
STATE OF 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 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.

Presiding:

D’Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 3, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject properties for the lien date January 1, 2004.

2. There are two properties at issue, Parcel No. #####-1, located at ADDRESS 1 (“ADDRESS 1”) and Parcel No. #####-2 located at ADDRESS 2 (“ADDRESS 2”).

3. For the January 1, 2004 lien date the County Assessor had valued the ADDRESS 1 at \$\$\$\$\$ and the County Board of Equalization had sustained the value. The County Assessor had valued the ADDRESS 2 at \$\$\$\$\$ and the County Board of Equalization reduced the value to \$\$\$\$\$.

4. Both properties had been originally constructed as single-family residences. Then later both residences were converted into apartment units. Both buildings, however, have not been separately metered for utilities. The evidence indicates in the neighborhood of the subject properties these types of buildings are sometimes being purchased to be converted back into single-family residences. In fact, after the lien date, both these properties had been sold and the intent of the purchaser was to reconvert them back to single-family residences. The subject properties are located in an area of CITY known commonly as the “(X).” This is a unique neighborhood where there is multi-family housing alongside single-family residences and demand for properties has historically remained high.

5. The ADDRESS 1 consists of .30 acres of land and the residence has been divided into six apartment units. The building was originally constructed in 1903. It has 2594 above grade square feet and a 1045 square feet in the basement with a ground level entry. There are 4 one-bedroom, one-bath units with approximately 504 square feet each, 1 studio apartment unit with approximately 504 square feet and 1 two-bedroom unit in the basement. There is uncovered off-street parking at the rear of the building. The Appraiser for the County had concluded that the building was in fair condition and that the structure was a brick Class D construction.

6. The County considered the ADDRESS 1 to have total rentable square feet of 3565. Petitioner argued that a lot of the interior should not be included in the rentable square feet because of the fact that a common central hallway took up space in both the main floor and second floor. However, he did not present

Appeal Nos. 05-1217 & 05-1218

an appraisal, measurements or drawings to support a different conclusion on the square feet. In addition to the appraisal, Respondent's representative points to the Multiple Listing Service ("MLS") Report for this property. Petitioner had listed the property in July 2005 and had sold it in early 2006. The MLS report indicated 4100 total square feet and 3750 rentable square feet, more than supporting the County's position on this point.

7. The ADDRESS 2 consists of .17 acres of land and the residence has been divided into five apartment units. The building was originally constructed in 1896. According to information in the County's appraisal this building has 3618 above grade square feet and a 1668 square foot basement, which totals 5286. However, the County indicates that this property has only 3420 rentable square feet. There are 2 one bedroom, one-bath units with approximately 560 square feet each, 1 studio apartment unit with approximately 350 square feet, 1 two-bedroom unit with 1150 square feet and 1 two-bedroom unit with 800 square feet. There is uncovered off-street parking at the rear of the building and a four-car garage. The Appraiser for the County had concluded that the building was in fair/average condition and that the structure was a brick Class D construction.

8. It is difficult to determine the square foot of this property because there were some internal inconsistencies with the County appraisal including a large difference between the total square feet and the rentable square feet and even some inconsistencies with the rentable square feet. The appraisal indicated it had 3420 rentable square feet in some portions of the appraisal and 3565 in others. Of course the basement of the residence may be unfinished which could account for some of the difference between total and rentable square feet. Then there is an additional and larger discrepancy between the appraisal and the MLS listing for this property. Peittioner had also sold this ADDRESS 2 in 2006. The MLS listing indicates the ADDRESS 2 had 4000 rentable square feet. Petitioner also stated this ADDRESS 2 was larger and more valuable than the ADDRESS 1 and so did not understand why the County's values indicated otherwise.

9. Petitioner argued that the properties values should be based on a gross rent multiplier of 9.3

Appeal Nos. 05-1217 & 05-1218

applied to his actual rents or income. He testified that because the apartments were not separately metered he had to pay the utility charges, which had been increasing at a rate of 10% to 12% per year. However, he states he was unable to raise rents to cover the increasing costs of utilities, as there had been a decline in the demand for the converted residential units in the (X) location. He presented his income tax return information and argued that his actual income from the ADDRESS 1 had been \$\$\$\$\$, which when multiplied by 9.3 equaled \$\$\$\$\$. For the ADDRESS 2 the actual rent was \$\$\$\$\$, which when multiplied by 9.3 equaled a value of \$\$\$\$\$.

10. Respondent submitted appraisals in this matter and argued that the values should be raised above those set by the County Board of Equalization. The appraisals had been prepared by RESPONDENT REPRESENTATIVE, Certified General Appraiser.

11. For the ADDRESS 1 it was RESPONDENT REPRESENTATIVE' appraisal conclusion that the value of the property on the January 1, 2004 lien date was \$\$\$\$\$. He considered all three approaches to value, the cost, income and sales approaches. In considering the sales approach he relied on four comparables, all converted rentals and all within a few blocks of the subject. These properties had sold in a range from \$\$\$\$\$ to \$\$\$\$\$. One property located at ADDRESS 3 had sold for \$\$\$\$\$ in October 2003. The Commission would note that there appears to be an error on the appraisal on the comparable sales page, with the ADDRESS 2 being listed as the subject property instead of the ADDRESS 1. For this reason the Commission cannot rely on the appraisal adjustments because it is unclear to which property they pertain. However, the sale prices and information regarding the comparables do support the higher value for this property. For his income approach RESPONDENT REPRESENTATIVE considered the market rents for comparable properties, rather than Petitioner's actual income from the properties. This would be typical of a market value appraisal. 12.

For the ADDRESS 2 it was RESPONDENT REPRESENTATIVE' appraisal conclusion that the value as of January 1, 2004, was \$\$\$\$\$. Again all three approaches to value were considered. From the MLS

information and information contained in the appraisal it appears that RESPONDENT REPRESENTATIVE has an inaccurate number for the rentable square foot of this property, that the real number is significantly higher. He had used the same sale comparables and same type of income approach as for the other property. The appraisal supports a higher value for this property than was set by the County Board of Equalization, and the appraisal value may, in fact, be too low based on the rentable square foot concern.

13. Petitioner did sell the subject properties early in 2006. He had sold the ADDRESS 1 for \$\$\$\$\$ and the ADDRESS 2 for \$\$\$\$\$. The MLS listed no concessions for either sale. Petitioner argues that he had to pay closing costs, legal costs and evict tenants. Also both parties acknowledged that the market conditions had improved from the lien date at issue in this matter and when these sales occurred.

14. The evidence indicates that, although an income approach is one of the considerations for valuing properties, there are times when smaller residential rental complexes do not sell for a price based on actual income. Based on the sales this appears to also be a consideration for the converted residences in the (X) area. They are being purchased, not necessary for the potential rental income, but to convert back to single family or for investment in an appreciating market.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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. For purposes of taxation, “fair market value” shall be

determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

3. (1) 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 commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . (4) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

CONCLUSIONS OF LAW

1. 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).

2. In this matter Petitioner has not provided sufficient evidence of a lower value. His income approach based on the actual income was far below the County income approach and comparable sales. The County's approach was based more on market rent considerations as well as market sales. Petitioner's income approach is refuted by the sales comparables presented by Respondent, which were in the same neighborhood and were truly comparable properties. Property tax is based on the market value of the property, which is

Appeal Nos. 05-1217 & 05-1218

defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. The evidence indicates that the subject properties had a higher market value than as argued by Petitioner.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2004, is \$\$\$\$ for parcel no. #####-1 and \$\$\$\$ for parcel no. #####-2. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2006.

Jane Phan
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.

Appeal Nos. 05-1217 & 05-1218

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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