

06-0828
Property Tax/Locally Assessed Commercial
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 06-0828
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Commercial
SALT LAKE COUNTY,)	Tax Year: 2005
UTAH,)	
)	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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was presented to the Tax Commission in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on November 27, 2006. Petitioner is appealing the assessed value as established for the subject property by Salt Lake County Board of Equalization. The lien date at issue is January 1, 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. 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).)

(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).)

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 is parcel no. ##### and is located at ADDRESS, CITY. Respondent refers to the building on this property as the APARTMENT COMPLEX 1, while Petitioner refers to this building as the APARTMENT COMPLEX 2. The Salt Lake County Assessor's Office had originally set the value of the subject property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization reduced the value to \$\$\$\$\$.

The subject property consists of .43 acres of land improved with a 24-unit apartment building. The building was constructed in 1967 and has 15,132 square feet total gross all of which is considered rentable as the access to the units is from exterior walkways. There is a four-car carport and the rest of the parking, consisting of 22 parking spaces, is uncovered. As of the lien date the County considered this building to be in average condition. There were eighteen one-bedroom units of approximately 594 Square feet and six two-bedroom units of 740 square feet. Petitioner reports that this apartment building has had some settling problems with a major crack in the front and there are significant "out of square" problems in the interior.

Petitioner did not submit an appraisal in this matter, nor did he provide cap rate comparables. Petitioner argued the value of the building should be based on his actual income and expenses, or some averages of actual income and expenses. He disagreed with a valuation based on potential gross income and market expenses. Petitioner indicated that he had a considerable amount of experience in real estate sales and real estate investment and that when investors acquired a property like this they would be concerned primarily with the actual income, including unfavorable long-term leases. Petitioner also argued that it should be considered in the value where he is charging below market rates for some long term but low income tenants who would be unable to pay market rates. From the rent rolls provided Petitioner had no long-term leases that prohibited him from raising rents. The leases all had either expired or were scheduled to expire by the end of 2005. However, there were some units that appeared to be leased at below

market rates, including the manager unit. Petitioner indicates that his actual expenses for this property were \$\$\$\$\$ for 2003 and \$\$\$\$\$ for 2004, or an average of \$\$\$\$\$. The Commission notes that it appears to be an error in the total for the 2004 expenses because they do not actually add up to the \$\$\$\$\$ indicated. Petitioner would have to explain whether the error is the total expenses number or in some of the line items. Petitioner's expenses include real estate taxes as well as remodeling and floor covering expenses so would not compare directly with Respondent's expenses where these items are accounted for either in the reserve or in the overall capitalization rate.

Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE, Certified General Appraiser, and Salt Lake County employee. It was RESPONDENT REPRESENTATIVE'S appraisal conclusion that the value for the subject property was \$\$\$\$\$. In the appraisal she considered both a sales approach and an income approach. Her sales approach conclusion was \$\$\$\$\$ and her income approach conclusion \$\$\$\$\$. She gave equal weight to the two approaches.

For the sales approach, RESPONDENT REPRESENTATIVE considered four comparables. Two of these properties were located very near the subject, and two others were south of STREET which is a different neighborhood. The comparables were all a different style from the subject and had interior hallway access to the units. The comparable buildings were also a few years newer. These properties had sold for a range of \$\$\$\$\$ to \$\$\$\$\$ per unit or \$\$\$\$\$ to \$\$\$\$\$ per square foot. She concluded from these sales that the value of the subject was \$\$\$\$\$ per unit or \$\$\$\$\$ per square foot, which resulted in a value of \$\$\$\$\$.

For her income approach RESPONDENT REPRESENTATIVE'S effective gross income ("EGI") of \$\$\$\$\$ was higher than Petitioner's 2004 actual rental income of \$\$\$\$\$. The reason for this difference was twofold. She determined the income based on market rents not actual rents. While most units were around market rent, a few were lower. Additionally this

property had vacancy rates higher than the 7%. At the hearing RESPONDENT REPRESENTATIVE conceded that the stabilized vacancy rate she had used of 7% was low and the rate could be 10%. She had made a rent loss deduction in her appraisal for the higher vacancy. In addition she had included \$\$\$\$ in Miscellaneous Income. Petitioner argued that the laundry income should not be included because he had to pay personal property tax on the machines and additionally, the actual laundry income was only \$\$\$\$ and Respondent conceded this point at the hearing. Miscellaneous Income would include late penalties and other income like parking rentals, in addition to laundry income and is typically included in real property appraisals.

For expenses, RESPONDENT REPRESENTATIVE considered expense comparables and concluded that the expenses should be \$\$\$\$ per square foot, or a total of \$\$\$\$. RESPONDENT REPRESENTATIVE pointed out in her appraisal that this was above the EquiMark Benchmark that indicated average expenses without property tax were \$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE'S expenses did not include remodeling and new floor coverings as these types of items would be accounted for with the reserves. She did indicate that her reserves of 3% could be as high as 4%. Her expenses also did not include real estate taxes that were accounted for in the capitalization rate.

To compare Respondent's expense with those indicated by Petitioner on his year-end income statement, he indicates \$\$\$\$ in total expenses for 2003. If the amount indicated for real-estate tax, floor coverings and remodeling were subtracted, this would be an expenses of \$\$\$\$ or \$\$\$\$ per square foot. For 2004 if these items were subtracted from the total expenses of \$\$\$\$ indicated on the report, this would be expenses of \$\$\$\$ or \$\$\$\$ per square foot. The average of these two years would be \$\$\$\$ or \$\$\$\$ per square foot, considerably lower than the expenses RESPONDENT REPRESENTATIVE allowed in her appraisal. However, as noted

above, there appears to be an error with the 2004 expenses on the information provided by Petitioner.

RESPONDENT REPRESENTATIVE also supported her capitalization rate of %%% with eight sales. The buildings that she relied on, like the subject, were old enough to also have maintenance and renovation issues.

During the hearing RESPONDENT REPRESENTATIVE recalculated her value with the 10% vacancy rate, 4% reserve and lowered miscellaneous income. Making these changes to her income approach resulted in a value of \$\$\$\$ from that approach. Giving the income and sales approaches equal weight would indicate a value for this property of \$\$\$\$.

After considering the evidence presented by the parties, the Commission concludes that Petitioner has failed to provide a basis for lowering this value. Market value is based on the normalized expenses that a purchaser would expect to incur each year, excluding capital type expenditures that could be accounted for in the reserves or an adjustment to the capitalized value. Market value is not based on actual rents that are intentionally lower than market. If there were something inherent with the property that would cause the expenses to be consistently higher than average expenses for other buildings, than it would be appropriate to consider the higher actual expenses in the value. However, Petitioner has not presented sufficient evidence that the expenses should be different from those determined by Respondent in its appraisal. Petitioner provided expenses for 2003 and some error in its expenses for 2004. It is unclear whether the settlement and cracking contribute to ongoing higher expenses or if this would be a one time repair cost, which may be a cost that could be subtracted from the capitalized value if Petitioner produced bids or reliable estimates for the repair.

Respondent's adjusted appraisal value is within a reasonable range from the Board of Equalization's value. Petitioner has not submitted evidenced that would call the value into question or provide the basis for a lower value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005, is \$\$\$\$\$.

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 _____, 2007.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Appeal No. 06-0928

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