

06-0829
Property Tax/Locally Assessed Commercial
Signed 02/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 06-0829
)	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. The building on the property is the APARTMENTS. 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 sustained the value to \$\$\$\$\$.

The subject property consists of .31 acres of land improved with a 15-unit apartment building. The building was constructed in 1970 and has 13,320 square feet total gross and 11,400 square feet rentable. Access to the units is through interior hallways. As of the lien date the County considered this building to be in average condition. There are three one-bedroom units of approximately 600 square feet and twelve two-bedroom units of 800 square feet. There is only one parking space per unit. During 2004 there was significant turnover and vacancy due to a crime that occurred in one of the units. Additionally Petitioner indicates there is an ongoing and unusual plumbing problem that Petitioner cannot solve without tearing out and replacing all the pipes. The pipes are developing pinhole leaks then the water destroys ceilings, carpet and sometimes walls. There was also an issue with the roof, which Petitioner had to replace in 2002.

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. Although he did acknowledge that some purchasers were speculators who thought that everything in the real estate market would increase and purchased for short-term ownership or for "flipping" as the market rose.

Petitioner provided his rent roll. In addition he provided expenses from 2001 through 2004. His total expenses for 2001 were \$\$\$\$\$, for 2002 were \$\$\$\$\$, for 2003 were \$\$\$\$\$ and for 2004 were \$\$\$\$\$. However, in these expenses he includes real estate taxes as well as some replacement costs that would not generally be included in the appraisal expenses, but would be items that would be accounted for in the reserves. For example in 2002 there was a \$\$\$\$\$ expense regarding the roof, which was apparently the roof replacement. Petitioner had included in his expenses line items that appeared to be replacing floor coverings, painting and remodeling. So although the total expense he had indicated for 2004 were \$\$\$\$\$, when converted to appraisal expenses the expenses would be \$\$\$\$\$, which is the amount Respondent used in its appraisal.

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 within a block of the subject and were very similar buildings with similar ages and the same number of units. These two buildings had sold for \$\$\$\$\$ and \$\$\$\$\$. Overall these were very good sales comparables. The other two comparables were in different areas and were less similar. RESPONDENT REPRESENTATIVE looked at the comparables on both a price per square foot and a price per unit analysis. She did give all four comparables equal weight, the Commission would put a higher weight on comparables one and two, given their similarity with the subject, but this would not make a lot of difference, possibly indicating a value closer to \$\$\$\$\$.

For her income approach RESPONDENT REPRESENTATIVE'S potential gross income was based on actual rents, which she had determined were also market rents. She had allowed only a 7% vacancy. Actual vacancy during 2004 had been higher. At the hearing RESPONDENT REPRESENTATIVE conceded that the stabilized vacancy rate she had used of 7% was low and the rate could be 10% with an additional rent loss deduction. She had included \$\$\$\$\$ in Miscellaneous Income. Petitioner argued that the laundry income was only \$\$\$\$\$ and RESPONDENT REPRESENTATIVE conceded to this amount.

For expenses, RESPONDENT REPRESENTATIVE considered expense comparables as well as the 2004 actual expenses and concluded that the expenses should be \$\$\$\$\$ per square foot, or a total of \$\$\$\$\$. These expenses are lower than the average indicated by EquiMark of \$\$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE'S expenses did not include remodeling, painting or roofing, which would be in the reserves. She had concluded from the 2004 expenses and line items provided by Petitioner that although Petitioner's total had been \$\$\$\$\$, of that amount the appraisal expenses would be \$\$\$\$\$, the amount she used in her appraisal.

RESPONDENT REPRESENTATIVE supported her capitalization rate of %%%% with nine 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 as she had done in this appraisal would indicate a value for this property of \$\$\$\$\$.

After considering the evidence presented by the parties, it is clear that the value set by the Board of Equalization for this property is too high. Because of the similarity of the

comparables the sales approach is a strong approach, although the Commission would conclude from it a value closer to \$\$\$\$\$. In looking at the actual expenses provided by Petitioner and converting them to appraisal expenses similar to RESPONDENT REPRESENTATIVE'S approach for 2004, they indicate high expenses of \$\$\$\$\$ for 2001, but for the next three years expenses ranging from \$\$\$\$\$ to \$\$\$\$\$. The four year average is \$\$\$\$\$, which equals \$\$\$\$\$ per square foot. Petitioner has proffered that there is an inherent problem with this building that will require ongoing additional expenses, that being the plumbing problem. For this reason the Commission concludes that it would be appropriate to calculate the value based on the four-year average. The result from this would be an income value rounded to \$\$\$\$\$. It is appropriate considering the sales comparables to give equal weight to the sales value of \$\$\$\$\$. The resulting value is \$\$\$\$\$.

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

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