

06-0830  
Property Tax/Locally Assessed Commercial  
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>INITIAL HEARING ORDER<sup>1</sup></b>
	)	
	)	
Petitioner,	)	Appeal No.    06-0830
	)	Parcel No.    #####
v.	)	
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Commercial
SALT LAKE COUNTY,	)	Tax Year:    2005
UTAH,	)	
	)	Judge:        Phan
Respondent.	)	

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**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

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<sup>1</sup> This order may have been sent out without a mailing certificate on 02/14/07. It is being re-sent with the mailing certificate just to make sure all parties have received the order.

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, Utah. It is known as 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.

The subject property consists of .37 acres of land improved with a 17-unit apartment complex. The apartments are in three separate buildings in a courtyard formation. The buildings were constructed in 1965 and have 14,271 square feet total gross and 13,550 rentable square feet. The buildings have 6 one-bedroom units with 735 square feet, 10 two-bedroom units with 820 square feet and 1 three-bedroom unit with 940 square feet. The County considered the buildings to be in average condition. There is an eleven-car carport and no other parking on the property.

Petitioner did not submit an appraisal in this matter, nor did he provide capitalization 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. 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.

Petitioner indicates that his actual rental income from this property was \$\$\$\$\$ for 2002, \$\$\$\$\$ for 2003 and \$\$\$\$\$ for 2004. According to his information, his total expenses for

this property were \$\$\$\$ for 2002, \$\$\$\$ for 2003 and \$\$\$\$ for 2004. 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. The properties were not in the same neighborhood as the subject, although two were in similar or comparable areas. The subject units were on average larger than the comparables. The comparable properties had sold for a range of \$\$\$\$ to \$\$\$\$ per unit or \$\$\$\$ to \$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE made reasonable appraisal adjustments and concluded from these sales that the value of the subject was \$\$\$\$ per unit or \$\$\$\$ per square foot, which resulted in a sales comparison value of \$\$\$\$.

For her income approach RESPONDENT REPRESENTATIVE'S effective gross income ("EGI") of \$\$\$\$ was higher than Petitioner's 2004 actual rental income of \$\$\$\$ and three year average income that based on the information provided was \$\$. The reason for this difference was twofold. RESPONDENT REPRESENTATIVE'S income was based on what she perceived to be market rents and her rents were higher than actual. While the rent she concluded for the two and three bedroom units was comparable to the actual rents for those types of units, her rent conclusion for the one-bedroom units of \$\$\$\$ was higher than most of the actual rents for those units listed in the rent roll. Based on this she conceded at the hearing that her potential

gross income (“PGI”) was too high. Additionally she had used a vacancy rate of only 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% in addition to a rent loss deduction.

In addition to the rental income RESPONDENT REPRESENTATIVE 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 \$\$\$\$\$. 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. However, RESPONDENT REPRESENTATIVE did adjust this during the hearing to the actual laundry amount. With the change to PGI, vacancy rate and miscellaneous income, RESPONDENT REPRESENTATIVE’S EGI was lowered to \$\$\$\$\$.

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 the EquiMark Benchmark 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 a three-year total expense average of \$\$\$\$\$. However if the real-estate taxes, floor coverings expense and remodeling were subtracted out to make this comparable with Respondent’s number, the three year average would be approximately \$\$\$\$\$ or \$\$\$\$\$ per square foot, the same as RESPONDENT REPRESENTATIVE allowed in her appraisal.

RESPONDENT REPRESENTATIVE also 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 lower PGI, 10% vacancy rate, lowered miscellaneous income and 4% reserve. 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 \$\$\$\$.

Upon weighing the evidence in this matter and noting it is Petitioner who has the burden of proof to lower the value set by the County Board of Equalization, the Commission finds insufficient evidence to reduce the value. Certainly the income approach is lower than the Board of Equalization's value. However, the sales comparison approach indicated a value of \$\$\$\$\$. Although the Commission does consider the income approach to generally be the better indicator of value for these types of properties, the sales approach should not be disregarded. It shows the amount at which reasonably similar apartment complexes are actually selling. Even if more than equal weight were given to the income approach, this would support the County Board of Equalization's 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

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