

06-0932
Property Tax/Locally Assessed
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 06-0932
)	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 REPRESENTATIVE
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 the 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. The property is the site of 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 .31 acres of land improved with a 24 unit apartment building. The building was constructed in 1966 and has 22,848 total gross square feet, 19,872 of which are considered rentable. Twelve of the units are two bedroom units with approximately 916 square feet and twelve are one-bedroom units with approximately 740 square feet. There also appears to be a manager's apartment. There is basement parking, but only one space per unit.

The building is of a brick Class C construction and was considered to be in good condition by the County on the lien date. Petitioner indicates that he incurred significant expense in 2001 and 2002 in renovating and remodeling this building. In 2001 he updated the electrical and HVAC systems, repainted the interior of the building and replaced some floor coverings. In 2002 there was some additional remodeling and the replacement of more floor coverings.

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 argued that the value should not be 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.

Additionally, he pointed out that the reason the expenses for 2003 and 2004 were low was because of the fact that he had incurred significant costs in 2001 and 2002 in the

renovation and remodeling. Petitioner indicates that his total expenses for this property were \$\$\$\$\$ for 2001, \$\$\$\$\$ for 2002, \$\$\$\$\$ for 2003 and \$\$\$\$\$ for 2004. He also indicated for 2005 his expenses were again over \$\$\$\$\$. Petitioner argues that there are still many costly repairs that need to be made to the building. The elevator will need to be replaced as well as the windows.

The Commission notes that if you took Petitioner's 2004 actual NOI of \$\$\$\$\$, from which taxes have already been deducted and applied the capitalization rate provided by the County of %%%%, the result would be a value for this property of \$\$\$\$\$. This is higher than the value set by the County Board of Equalization, or indicated in Respondent's 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 placed equal weight on the two approaches.

For the sales approach, RESPONDENT REPRESENTATIVE considered four comparables. Two of these properties were located in the (X) area of CITY, like the subject property. The other two were in different neighborhoods. Three of the buildings were similar in age to the subject, the fourth was 74 years old on the lien date. 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 the \$\$\$\$\$ to \$\$\$\$\$ range.

For her income approach RESPONDENT REPRESENTATIVE'S effective gross income ("EGI") of \$\$\$\$\$ was somewhat higher than Petitioner's 2004 actual rental income of \$\$\$\$\$. However, she conceded that the stabilized vacancy rate she had used in her approach of 7% was low and the rate could be 10%. If this change is made the EGI becomes \$\$\$\$\$. In this

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 \$\$\$\$\$. Miscellaneous Income would include late penalties and other income like parking rentals, but RESPONDENT REPRESENTATIVE conceded to the \$\$\$\$ at the hearing.

For expenses, RESPONDENT REPRESENTATIVE considered expense comparables and concluded that the expenses should be \$\$\$\$ per square foot, or a total of \$\$\$\$\$. For further support RESPONDENT REPRESENTATIVE pointed to an EquiMark Benchmark that indicated average expenses without property tax were \$\$\$\$ per square foot. Although this appears to be between Petitioner's 2003 and 2004 actual expenses, it is not comparable because RESPONDENT REPRESENTATIVE'S expenses do not include property taxes which she accounts for later in the overall rate. For this reason, her expenses are essentially higher than Petitioner's actuals. The reserve is allowed for capital expenditures like remodeling or replacing carpets and windows. RESPONDENT REPRESENTATIVE also supported her capitalization rate of %%% with eight sales. The buildings that she relied on, like the subject's, were old enough to also have maintenance and renovation issues. During the hearing RESPONDENT REPRESENTATIVE recalculated her income value using a 10% cap rate, actual laundry income and a 4% reserve instead of a 3%, the resulting value was \$\$\$\$.

After considering the weight of the evidence in this matter, the Commission tends to agree with Petitioner that the better approach for this property, considering the differences between the subject and the sales comparables, would be the income approach. However, the sales approach should not be completely disregarded and does indicate that there is market for these types of properties that might be higher than the income would indicate. In the income approach, Respondent's appraisal has followed typical appraisal practices in valuing this property considering normalized or stabilized market rent and expenses. Additionally Petitioner's

actual rent and expenses support these market rents and expenses. A reserve is also allowed to take care of the long-term capital improvement items, for example replacing the roof every twenty years. Respondent did concede the reserve for this property could be higher. With the subject property there may have been deferred maintenance issues such as the prior owner not making the capital improvements that should have been made over the years. However, it would not be appropriate to capitalize into perpetuity the cost of a one-time elevator replacement, or a roof replacement.

Petitioner has the burden of proof in this matter and has failed to establish error or basis for a lower value. The evidence in this matter strongly supports the value set by the County Board of Equalization. An income value based on actuals for the 2004 year would result in \$\$\$\$\$. Based on Respondent's appraisal corrected for the vacancy rate, reserves, and Miscellaneous Income, the value would be \$\$\$\$\$. Because it is the Commission's position that the better approach, when market information is available, is to value the property based on the more stabilized or normalized market rates, the Commission concludes that Respondent's corrected value is the better income approach and, considered with the sales approach, supports the value set by the County Board of Equalization.

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