

06-0957
Property Tax/Locally Assessed Commercial
Signed 02/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
)	
Petitioner,)	Appeal No. 06-0957
)	Parcel Nos. #####-1, #####-2
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, Appraisal Manager, 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 December 11, 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.

At the hearing Petitioner's representative asked to withdraw the appeal and that the matter be dismissed. Respondent's representative objected because Respondent had already prepared an appraisal and had exchanged its appraisal ten days prior to the hearing as required in this matter. The appraisal indicated a higher value for the property. Respondent objected to dismissal of the appeal requesting that the value for the property be raised to the appraisal value. The Commission denies Petitioner's request to have the matter dismissed as Respondent's appraisal indicating a higher value is treated as a responsive pleading. Therefore, Petitioner may not unilaterally withdraw and have the appeal dismissed. In addition to the fact that a responsive pleading had been filed, Petitioner had waited until the hearing to make the request, requiring the County to expend additional time to prepare for the hearing.

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 consists of two parcels, parcel nos. #####-1 and #####-2. It is located at ADDRESS in Salt Lake County, Utah. The subject property is the site of the APARTMENTS. The Salt Lake County Assessor's Office had originally set the value as of the lien date for parcel no. #####-1 at \$\$\$\$\$. The Salt Lake County Board of Equalization reduced the value to \$\$\$\$\$. For parcel no. #####-2 the Salt Lake County Assessor's Office had originally set the value as of the lien date at \$\$\$\$\$. The County Board of Equalization raised the value to \$\$\$\$\$. The combined value for the two parcels as set by the County Board of Equalization was \$\$\$\$\$.

The subject property consists of a combined 14.46 acres of land improved with a 336-unit apartment complex. The apartments are in nineteen separate buildings. All buildings were constructed in 1979. There are 302,856 rentable square feet. There is also a 2,880 square foot clubhouse and a 720 square foot Laundromat. The County considers the property to be of Class D construction and in good condition on the lien date. The property also has an office, service garage, carports for the units, fencing, concrete and asphalt paving. Amenities include a

swimming pool, tennis courts and hot tub. The unit mix consisted of 132 one-bedroom one-bath units, 156 two-bedroom two-bath units and 48 three-bedroom two-bath units.

Petitioner did not submit an appraisal in this matter. Petitioner's representative argued that the value should be based on the actual income and expenses. Based on this it was her opinion that the combined value for the subject property was \$\$\$\$\$. During the 2004-year there were some issues with vacancy requiring Petitioner to provide rental concessions to lease the units. Petitioner submitted a rent roll and operating statement. The requested value was based on a potential gross income of \$\$\$\$\$ from which she deducted \$\$\$\$\$ for vacancy and rent concessions. She argued that rent concessions should be subtracted from the PGI as part of the capitalized value rather than deducted after the value had been capitalized. She did add \$\$\$\$\$ for other income to conclude that the effective gross income was \$\$\$\$\$. Expenses were calculated to be \$\$\$\$\$, which amount did not include property tax. Based on this, the net operating income ("NOI") was \$\$\$\$\$. Her capitalization rate was %%% to which she had added the effective tax rate resulting in an overall rate of %%%.

Respondent submitted an appraisal in this matter prepared by APPRAISER, Certified General Appraiser, and Salt Lake County employee. It was APPRAISER'S appraisal conclusion that the combined value for both parcels of the subject property was \$\$\$\$\$. In the appraisal she considered both a sales approach and an income approach. Her combined sales approach conclusion was \$\$\$\$\$ and her combined income approach conclusion \$\$\$\$\$. The most weight was given to the income approach.

For the sales approach, APPRAISER considered four comparables. They were not very near the subject in location. The number of apartment units for the comparables was 300 units, 253 units, 304 units and 200 units. These comparables were built near the same time as the subject. APPRAISER did make appraisal adjustments and considered the sales both on a per unit and per square foot basis. Due to the differences between the subject and the comparables, the

Commission concurs that it is appropriate to place more weight on the income approach, although the comparable sales supports a value of at least that concluded by the income approach.

For her income approach APPRAISER'S potential gross income of \$\$\$\$ was lower than that indicated by Petitioner's representative of \$\$\$\$\$. Additionally APPRAISER used the actual miscellaneous income as indicated in Petitioner's accounting records. However, APPRAISER allowed only 7% vacancy. In the calculation prepared by Petitioner's representative, an amount substantially higher than the 7% had been deducted for vacancy, concessions and credit loss. This was the difference between the two calculations that resulted in the County's value being higher than Petitioner's value. APPRAISER'S effective gross income ("EGI") of \$\$\$\$ was higher than Petitioner's. APPRAISER deducted Petitioner's actual appraisal expenses which indicated an NOI of \$\$\$\$\$. APPRAISER capitalized the NOI with an overall rate including taxes of %%% which indicated a value of \$\$\$\$\$.

After determining the capitalized value, APPRAISER concluded that a rent loss adjustment should be subtracted based on the fact that the actual vacancy for the period relative to the lien date was higher than the 7%. The rent loss deduction determined in this manner was \$\$\$\$\$. The Commission finds that APPRAISER handled the additional vacancy in an appropriate manner. When preparing an income approach an appraiser would not deduct an exceptionally higher than normal vacancy rate from the NOI. The vacancy rate to be capitalized should be a more stabilized rate. The major difference between the parties' values was based on whether the actual vacancy, concessions and rent loss was calculated as part of the NOI or as a rent loss deduction after the capitalized value had been determined. During the hearing Petitioner's representative indicated that she would send as a post hearing submission an appraisal article in support of the way she had treated the vacancy and concessions. However, the Commission never received this article from Petitioner.

The weight of the evidence provided in this matter supports the value established for the subject property in Respondent's appraisal.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the combined value of the two parcels of property at issue as of January 1, 2005, is \$\$\$\$\$. Respondent is to allocate this value between the two parcels at issue. The County Auditor is to adjust its records in accordance with this decision.

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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