

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 07-0395 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2006 Judge: Jensen
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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 regulation pursuant to 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Marc Johnson, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER REPRESENTATIVE, Jr., Taxpayer's Appraiser
For Respondent: RESPONDENT REPRESENTATIVE, County's Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 30, 2008. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-listed Petitioner (the "Taxpayer") is appealing the assessed value of the subject property as set by the Salt Lake County Board of Equalization (the "County") for the lien date January 1, 2006.
2. The subject property, parcel no. #####, is located at ADDRESS in CITY, Utah. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The County Board of Equalization sustained the value. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County

requests that the value set by the County Board of Equalization be reduced to \$\$\$\$\$.

3. The subject property consists of a .31-acre lot improved with an apartment building. The apartment building was 37 years old as of the lien date and built of average quality construction. It has 13,077 total square feet gross and 12,477 square feet rentable. It has three one-bedroom and one-bath units of approximately 600 square feet each and twelve two-bedroom one-bath units of approximately 890 square feet each. There are also two carports. One measures 18 feet by 58 feet with seven spaces. The second measures 20 feet by 72 feet and has eight spaces. The County considered the interior and exterior of the apartment building to be in good condition.

4. The Taxpayer presented an appraisal prepared by PETITIONER REPRESENTATIVE. The Taxpayer's appraiser concluded that the value of the subject property, as of September 20, 2006, was \$\$\$\$\$.

5. The Taxpayer's appraiser completed a valuation by a comparative sales approach. He considered the sales of three comparable properties with sale dates from October 2005 to July 2006. The sales comparables had between 11 and 14 units. The Taxpayer's appraiser did not discuss the sizes of the individual apartments in the sales comparables, but did indicate on cross-examination that one of the comparables had studio apartments that were smaller than the subject. All three comparables had apartment buildings that were older than the subject's apartment building. The Taxpayer's appraiser made adjustments to account for differences between the subject and the comparable properties. All of these adjustments were downward, indicating that the Taxpayer's appraiser found each of the sales comparables superior to the subject property. After taking these adjustments into account, the Taxpayer's sales comparables indicated values of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per unit of the subject. The Taxpayer's appraiser reconciled these per-unit values to a value of \$\$\$\$\$ for the subject property by the sales comparison method as of September 20, 2006.

6. The Taxpayer's appraiser completed a valuation using an income capitalization approach, using three apartment buildings as comparable properties for rents. One of the rental comparable properties had 12 two-bedroom units renting for \$\$\$\$\$ each per month; another had 14 one-bedroom units renting for between \$\$\$\$\$ and \$\$\$\$\$ per month each; the third had 12 one-bedroom units renting for \$\$\$\$\$ per month. All had ranges and refrigerators included. All three had buildings that were older than the building on the subject. On the basis of these comparable rentals, the Taxpayer's appraiser concluded that the Taxpayer's rents of \$\$\$\$\$ for a one-bedroom unit and \$\$\$\$\$ for a two-bedroom unit were at market rates. On that basis, the Taxpayer's appraiser made his income calculations using actual rents from the subject property.

7. The Taxpayer's appraiser annualized actual monthly rents for the subject property to calculate a

potential gross income of \$\$\$\$ per year. From the actual potential gross income, the Taxpayer's appraiser deducted vacancy and expenses that he derived from market sources. He deducted a 15 percent vacancy rate for an effective gross income ("EGI") of \$\$\$\$\$. He then deducted expenses of \$\$\$\$\$ (5.8 percent of EGI) for property taxes, \$\$\$\$\$ (0.9 percent of EGI), operating expenses of \$\$\$\$\$ (15.6 percent of EGI), management fees of \$\$\$\$\$ (5 percent of EGI), and reserves of \$\$\$\$\$ (5 percent of EGI) for total expenses of \$\$\$\$\$ (32.3 percent of EGI). Other than the statement in his report that these expenses were taken from comparable units in the area and compared to those of the subject, the Taxpayer's appraiser did not provide further explanation regarding the sources of these expense deductions. Subtracting total expenses from the effective gross income of \$\$\$\$\$, the Taxpayer's appraiser calculated an annual net operating income of \$\$\$\$\$.

8. The Taxpayer submitted a report of revenue and expenses indicating 2006 rental income of \$\$\$\$\$ from the subject property. When questioned as to why this was lower than his appraiser's estimate, the Taxpayer explained that he had high vacancy during the year. He indicated that he has found it better in the long run to live with long vacancies rather than accept tenants from whom he might have problems.

9. The Taxpayer's appraiser indicated that he was unable to extract any capitalization rates directly from the market, so he used a mortgage-equity analysis to develop a capitalization rate for the subject property. Using an interest rate of %%% percent, a loan to value ratio of %%% percent, a holding period of ten years, and no change in value over the holding period, the Taxpayer's appraiser calculated a capitalization rate of %%% percent. The Taxpayer's appraiser indicated that he used the %%% percent mortgage rate after calling a lender. He did not indicate the sources of his other assumptions. Dividing the net operating income of \$\$\$\$\$ by the capitalization rate of %%% percent, the Taxpayer's appraiser arrived at a total value of \$\$\$\$\$ (rounded) by the income approach.

10. In making a final reconciliation of the values of the approaches to valuation, the Taxpayer's appraiser indicated that he found the income capitalization approach as a strong reliable indicator of value. He indicated that the sales comparison approach was a supportive value indicator due to what he described as the current soft rental market. Accordingly, he reconciled the indicators to a final value of \$\$\$\$\$.

11. The County presented an appraisal prepared by RESPONDENT REPRESENTATIVE. The County's appraiser concluded that the value of the subject property, as of January 1, 2006, was \$\$\$\$\$.

12. The County's appraiser completed a valuation by a comparative sales approach. She considered the sales of five comparable properties with sale dates from March 2004 to July 2005. The sales comparables had between 11 and 15 units. The average unit sizes were between 499 and 727 square feet. Four of the

comparable apartment buildings were older than the subject; one was the same age. The Taxpayer's appraiser made adjustments to account for differences between the subject and the comparable properties. The adjustments covered factors including age and condition, unit size, quality of construction, and site characteristics. Some of the adjustments were downward indicating superior comparable properties; others were upward, indicating inferior comparable properties. After taking these adjustments into account, the Taxpayer's sales comparables indicated values of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per unit of the subject. The County's appraiser reconciled these per-unit values to a rounded value of \$\$\$\$\$ for the subject property by the sales comparison method as of January 1, 2006.

13. The County's appraiser also completed a valuation using an income capitalization approach, using six apartment buildings as comparable properties for one-bedroom one-bath units and nine comparable properties for two-bedroom one-bath apartments. One-bedroom one-bath units had monthly rents of between \$\$\$\$\$ and \$\$\$\$\$. Two-bedroom one-bath units had monthly rents of between \$\$\$\$\$ and \$\$\$\$\$. The County's appraiser discussed the quality and size of the comparable units and settled on market rents of \$\$\$\$\$ per month for the one-bedroom units and \$\$\$\$\$ per month for the two-bedroom units. On that basis, the County's appraiser made income calculations using these market rents.

14. The County's appraiser annualized actual monthly rents for the subject property to calculate a potential gross income of \$\$\$\$\$ per year. From the actual potential gross income, the County's appraiser deducted seven percent for vacancy. She indicated that she used 7 percent considering an EquiMark reported vacancy rate of 6.5 percent for year-end 2005 and an observed vacancy of zero percent when she observed the subject in July 2006. The County's appraiser added two percent to potential gross income to account for miscellaneous income from sources such as coin-operated laundry, late fees, and forfeited deposits. Taking these factors into account indicated an effective gross income ("EGI") of \$\$\$\$\$. The County's appraiser considered known expenses and management fees from six apartment buildings built between 1963 and 1970 with between 15 and 24 units to calculate expected expenses of \$\$\$\$\$ per square foot, not counting property taxes. This gave a total expense and management deduction for the subject property of \$\$\$\$\$, which is 28.9 percent of EGI. She deducted \$\$\$\$\$ for reserves (3.0 percent of EGI) for total expenses of \$\$\$\$\$ (31.9 percent of EGI). Deducting total expenses from the effective gross income of \$\$\$\$\$, the County's appraiser calculated an annual net operating income of \$\$\$\$\$.

15. The County's appraiser developed capitalization rates through the analysis of the sales of nine comparable properties with sale dates from March 2004 to December 2004. The capitalization rate

comparables had between 10 and 17 units and were built between 1909 and 1977. These sales indicated capitalization rates of between %%% percent and %%% percent. After considering the location, age, and condition of the subject, the County's appraiser settled on a capitalization rate of %%% percent. To this, she added %%% percent to account for property taxes to arrive at a total capitalization rate of %%% percent. Dividing the net operating income of \$\$\$\$ by the capitalization rate of %%% percent, the County's appraiser arrived at a total value of \$\$\$\$ (rounded) by the income approach.

16. In making a final reconciliation of the values of the approaches to valuation, the County's appraiser indicated that she found the income capitalization to be stronger than the sales approach. Accordingly, she reconciled the indicators to a final value of \$\$\$\$.

APPLICABLE LAW

1. 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 provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. To prevail in a real property tax dispute, a party seeking a value different from that determined by the board of equalization 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 that party. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

3. "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).)

DISCUSSION

The Commission first notes that the evidence shows error in the \$\$\$\$ value as determined by the board of equalization. None the evidence at hearing supported that value and both parties presented evidence to support values lower than \$\$\$\$\$. Accordingly, the Commission must determine a new value on the basis of a "sound evidentiary basis." *See Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

It appears that both parties presented appraisals that included valuation by a comparative sales approach and an income approach. Both appraisers testified that the income approach provided the more reliable approach for the subject property. The two appraisers' income approaches to valuation are similar in several respects. They both start with potential gross income for the subject property of approximately \$\$\$\$\$. Although both appraisers differed on line items making up expenses and reserves, both came to similar totals for expenses and reserves. In fact, the only areas of marked disagreement between the two appraisers' income approaches to valuation came in their vacancy deductions and their capitalization rates. Accordingly, the Commission reviews each party's approach to vacancy and capitalization rate.

The Taxpayer's appraiser used a 15 percent vacancy rate. He did not provide detail regarding his methodology in arriving at that vacancy rate other than to say it was "taken from comparable units in the area and compared to those of the subject." The County's appraiser relied on published market vacancy rates and then used a vacancy rate of 7 percent for the location of the subject property. Considering these approaches, the Taxpayer's approach is closely tied to actual vacancy rates at the subject property. As a general rule, the Commission gives stronger consideration to actual figures. However, the higher actual vacancy at the subject property at the subject property appears to be a business decision to accept a higher vacancy rate than the market. Because the actual figures in this case appear inconsistent with the market as a whole, the Commission finds the County's market approach more persuasive with regard to vacancy rates. Likewise, the County's income analysis includes pro-forma income. This would normally be a cause of concern, but further review indicates that the pro-forma income merely provides corroboration of actual income.

The Taxpayer's appraiser approached capitalization rates are made on a basis of mortgage equity analysis. He did so because he had been unable to extract any capitalization rates directly from the market. The County's appraiser derived a capitalization rate in reliance on the sales of nine comparable properties. These properties had a similar number of units as the subject and were in the general area of the subject. Comparing these two approaches, it appears that the County's market approach is better supported and the more persuasive approach for the subject property as of the lien date.

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, a party seeking a value different from that determined by the board of equalization 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 that party. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

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2. The Commission finds error in the \$\$\$\$ value as determined by the board of equalization. On that basis, the Commission must determine a new value on the basis of a sound evidentiary basis.

3. The value of \$\$\$\$ as proposed by the County's appraiser has a sound basis in the evidence presented. It is supported by market data and meets the requirements of Utah law.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2006, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2009.

Clinton Jensen
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. 59-1-601 and 63-46b-13 et. seq.

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