

08-1423
LOCALLY ASSESSED PROPERTY
SIGNED 01-15-09

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>SALT LAKE COUNTY BOARD OF EQUALIZATION</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-1423</p> <p>Parcel Nos. #####- 1 and #####- 2</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2007</p> <p>Judge: Marshall</p>
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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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, *Pro Se*

For Respondent: RESPONDENT REP, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County") for the January 1, 2007 lien date. This matter was argued in an Initial Hearing on November 4, 2008. Taxpayer was given three weeks of additional time to submit a written response to the County's appraisal, as he had not received it prior to the hearing. The Taxpayer did not submit any written response to the Commission in the time allowed. The subject properties are two separate apartment buildings in CITY. The first property is parcel no. #####- 1, which the County assessed at \$\$\$\$\$. The Board of Equalization sustained this value, and the Taxpayer is requesting the value be reduced to \$\$\$\$\$. The second property is parcel no.

#####- 2, which the County assessed at \$\$\$\$\$. The Board of Equalization sustained this value, and the Taxpayer is requesting the value be reduced to \$\$\$\$\$. The County is asking the Commission to treat the properties as a single economic unit, and reduce the total value to \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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. §59-12-102(12) (2007).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject properties consist of two separate apartment buildings located in CITY. The information provided by the Taxpayer indicates the buildings were built in 1916, while the information from the County indicates they were built in 1911. Parcel No. #####- 1 is located at ADDRESS 1, it is a three story building with 5,412 total square feet, 4,962 of which is rentable. The building has two 2-bedroom units and four 1-bedroom units. The building is considered to be in average condition. Parcel No. #####- 2 is located at ADDRESS 2, it is a four story building with 6,208 total square feet, 5,400 of which is rentable. The building has one 2-bedroom unit and seven 1-bedroom units. The building is considered to be in average condition. The County has asked the Commission to treat the buildings as a single economic unit.

The Taxpayer purchased both properties for \$\$\$\$ in May or June of 2005. He stated that there were concessions of approximately \$\$\$\$ to account for closing costs, the current months rent, and deposits. The Taxpayer believes that he over-paid for the property. He argued that the income approach is the most widely used to determine the value of rental units.

The Taxpayer argued that the County had increased the value of the subject properties at a higher rate than the market had appreciated. He provided the rent roll, IRS Form 8825 showing the income and expenses, copies of the valuation notices, the rates he used, and calculations to determine the value for each property. Taxpayer used a 7.5% vacancy rate, and calculated the value based on a capitalization rate of %%% for 2006, %%% for 2005 and %%% for 2004. He testified that he obtained the vacancy rate and the capitalization rates from the County. Below is a breakdown of Taxpayer’s value calculations:

	#####- 1	#####- 2
Potential Gross Income	\$\$\$\$	\$\$\$\$
Vacancy/Collection Losses	\$\$\$\$ (7.5%)	\$\$\$\$ (5.37%)
Effective Gross Income	\$\$\$\$	\$\$\$\$
Utilities	\$\$\$\$	\$\$\$\$
Maintenance	\$\$\$\$	\$\$\$\$
Repairs	\$\$\$\$	\$\$\$\$
Insurance	\$\$\$\$	\$\$\$\$
Taxes	\$\$\$\$	\$\$\$\$
Reserves for Roof Replacement	\$\$\$\$	\$\$\$\$
Total Operating Expense	\$\$\$\$	\$\$\$\$
Net Operating Income	\$\$\$\$	\$\$\$\$
%%% Cap Rate Value (2006)	\$\$\$\$	\$\$\$\$
%%% Cap Rate Value (2007)	\$\$\$\$	\$\$\$\$
%%% Cap Rate Value (2008)	\$\$\$\$	\$\$\$\$

The Taxpayer used the 2006 capitalization rate to determine his requested values of \$\$\$\$ and \$\$\$\$.

The County’s representative submitted a retrospective appraisal of the subject properties, treating them as one economic unit. The appraiser used both the sales comparison and income approach, and determined the fair market value as of the January 1, 2008 lien date to be \$\$\$\$.

The County’s representative used the comparable sales to determine both a value per square foot and a value per unit basis. The County’s representative determined that the value on a per square foot basis was \$\$\$\$\$, and that the value on a per unit basis was \$\$\$\$\$. Following is a breakdown of the County’s sales comparison approach:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
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Year Built	1911	1900	1898	1896	1973	1930	1903
Average Sq. Ft. Per Unit	740	702	702	626	697	903	605
Number of Units	14	9	6	5	9	6	8
Quality of Construction	Average	Average	Average	Average	Average	Average	Average
Amenities	Fair	Fair	Fair	Fair	Fair	Fair	Fair
Land/Building Ratio	1.01	1.87	1.76	2.23	1.32	1.29	3.06
Unit Mix	(13) 1B (1) 2B	(4) 0B (4) 1B (1) 2B	(6) 1B	(1) 0B (3) 1B (1) 2B	(6) 2B (3) 1B	(2) 1B (4) 2B	(8) 1B
Sale Price		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Price/SF		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Market SF Adjustments		0.00%	-2.3%	1.5%	14%	-2%	13.5%
Other SF Adjustments		5%	-5%	-15%	-35%	-5%	-15%
Adjusted Price/SF		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Price/Unit		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
Market Unit Adjustments		0.00%	-2.3%	1.5%	14%	-2%	13.5%
Other Unit Adjustments		7%	0.00%	13%	-34%	-31%	17%
Adjusted Price/Unit		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

The County’s appraiser made adjustments to the sales price to account for market conditions at the time of sale, location, average unit size, age/condition, the number of units, the unit mix, the quality of construction, amenities, and site characteristics. The appraiser determined a value of \$\$\$\$ for the subject property using the sales comparison approach.

In addition to the sales comparison approach, the County’s appraiser also determined a value based on the income capitalization approach. The County’s appraiser used the average rents in the overall market, a vacancy rate as determined by EquiMark, and added a 2% to the effective gross income for coin operated laundry, late fees, and forfeited deposits. She determined that the one-bedroom units had an average rent of \$\$\$\$ per month and that the two bedroom units had an average rent of \$\$\$\$ per month. Below is a breakdown of the County’s income capitalization approach:

	Rates	Totals
Potential Gross Income	11 Units @\$\$\$\$ 3 Units @ \$\$\$\$\$	\$\$\$\$

Stabilized Vacancy	7%	\$\$\$\$\$
Miscellaneous Income	2.5%	\$\$\$\$\$
Effective Gross Income		\$\$\$\$\$
Reserves	3%	\$\$\$\$\$
Expenses	\$\$\$\$\$/sf	\$\$\$\$\$
Net Operating Income		\$\$\$\$\$
Capitalization Rate	%% %% (tax)	%%
Value		\$\$\$\$\$

The County’s appraiser used a stabilized vacancy rate of 7%. She noted that the EquiMark vacancy rate for 10-50 unit properties was 7.1% at the end of 2006, and that the subject properties had an actual vacancy rate of 14%; however the dollar vacancy was only 7.5%. In addition, the County’s appraiser increased the effective gross income 2.5% to account for coin operated laundry, late fees, and forfeited deposits. Expense rates were calculated to be \$\$\$\$ per square foot based on the age and size of the subject when compared to other rental properties. Finally, the County’s appraiser determined a capitalization rate of %%% and then added %%% to account for the 2007 effective tax rate, which were not included in the County’s expense calculations. The County’s appraiser determined a value based on the income approach of \$\$\$\$.

The County’s appraiser gave equal weight to both the sales and income approach, and determined a total value for the subject properties of \$\$\$\$\$. She requested the Commission treat the properties as a single economic unit and reduce the Board of Equalization value to \$\$\$\$\$. In addition, the County’s representative acknowledged that the Taxpayer probably did overpay for the property.

In seeking a value lower than that established by the Board of Equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. The Taxpayer provided discussion on the increase in value, use of the income approach, and documentation on the actual income and expenses for the subject properties, satisfying his burden to show an error in the value established by the Board of Equalization.

In support of his requested values, the Taxpayer performed calculations using the income approach. The Taxpayer used his actual income and expenditures and the rates provided to him by the County for vacancy and capitalization. The Taxpayer’s calculations resulted in a value of \$\$\$\$ for parcel no. #####- 1 and \$\$\$\$ for parcel no. #####- 2. As a part of its appraisal, the County also used the income approach. The County used estimated figures, based on market comparisons, in its calculation of value. The Commission finds that when available, it is

preferable to use the actual income and expenditures when calculating the value of a rental property using the income approach. Though the Taxpayer used the capitalization rate provided by the County, at the hearing, the County provided an updated capitalization rate of %%%%, increased to %%%% to account for the 2007 effective tax rate. Using the Taxpayer's actual income and expenditures, less the reduction for taxes, and the updated capitalization rate, the value of parcel no. #####- 1 would be \$\$\$\$ and the value of parcel no. #####- 2 would be \$\$\$\$\$, for a total of \$\$\$\$\$.

In addition to the income approach, the County also prepared a sales comparison analysis. The County's appraiser looked at five comparable apartment buildings. They ranged in size from five to nine units, and had sales prices ranging between \$\$\$\$ and \$\$\$\$\$. The Commission finds that that comparable number three is an outlier, as it sold for significantly less than the other buildings. Likewise, the Commission finds that Comparable number four is not a suitable comparable due to its location and age. The actual sales prices ranged between \$\$\$\$ and \$\$\$\$\$ for the remaining comparables. Excluding comparables three and four, the remaining properties have an average sales price of \$\$\$\$\$. On a price per square footage basis, the mean is \$\$\$\$\$ and the median is \$\$\$\$\$. At \$\$\$\$\$ per square foot, the total value of the properties would be \$\$\$\$\$. On a price per unit basis, the mean is \$\$\$\$\$ and the median is \$\$\$\$\$. At \$\$\$\$\$ per unit, the total value of the properties would be \$\$\$\$\$.

A total value of \$\$\$\$\$ for the two properties was calculated using the income approach. However, in light of the Taxpayer's purchase of the properties only one and one-half years prior to the lien date, and that both parties acknowledge that Taxpayer overpaid, the Commission finds the sales comparison should also be given weight. Excluding the two outlying sales comparables, the combined value of the subject properties is approximately \$\$\$\$\$. The Commission finds that in reconciling the two approaches, if the subject property were to have changed 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, as of January 1, 2007, the combined selling price would have been \$\$\$\$\$ for the January 1, 2007 lien date. This is a value of \$\$\$\$\$ per unit. Thus, the Commission finds that the value of parcel no. #####- 1, a six unit building, was \$\$\$\$\$ and the value of parcel no. #####- 2 was \$\$\$\$\$.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of parcel no. #####- 1 was \$\$\$\$\$ and parcel no. #####- 2 was \$\$\$\$\$ for the January 1, 2007 lien date. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. It is so ordered.

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
CITY, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2008.

Jan Marshall
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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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