

08-26-77
LOCALLY ASSESSED PROPERTY
SIGNED 03-19-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION FOR
COUNTY,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-2677

Parcel Nos. 12-089-0-0001

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: Marshall

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, Representative

For Respondent: RESPONDENT REP 1, Appraiser for COUNTY

RESPONDENT REP 2, COUNTY Assessor

RESPONDENT REP 3, Appraiser Supervisor for COUNTY

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the COUNTY Board of Equalization ("the County") for the January 1, 2008 lien date. This matter was argued in an Initial Hearing on March 5, 2009. The County assessed the property at \$\$\$\$\$, which the Board of Equalization sustained. The County asked the Commission to sustain the Board of Equalization value. The Taxpayer requested the value be reduced 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 (2008).

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) (2008).

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 (2008).

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 property is a rent-restricted complex located at ADDRESS in CITY 1. The building has 62,200 square feet. There are 24 one-bedroom units, 36 two-bedroom units, and 16 three-bedroom units. The building has a simple design, and was built of lower-cost construction materials.

Neither the County nor the Taxpayer's representative were aware of any comparable sales in the area. The Taxpayer used the actual income, vacancies, and expenses for the 2007 calendar year to determine the value of the subject, which the County does not dispute.

Below is a breakdown of Taxpayer's value calculations:

Income:

Actual Rent	\$\$\$\$\$
Vacancy	\$\$\$\$\$
Other Income	\$\$\$\$\$
Effective Gross Income	\$\$\$\$\$

Operating Expenses:

Utilities	\$\$\$\$\$
Administration	\$\$\$\$\$
Maintenance	\$\$\$\$\$

Insurance	\$\$\$\$\$
Management	\$\$\$\$\$
Advertising	\$\$\$\$\$
Salaries	\$\$\$\$\$
Reserve for Replacement	\$\$\$\$\$
Property Taxes	\$\$\$\$\$
 Total Operating Expenses	 \$\$\$\$\$
Net Operating Income	\$\$\$\$\$
Capitalization Rate	%%%%%%%%
Indicated Value	\$\$\$\$\$

In support of the %%%%%%%%% capitalization rate, the Taxpayer’s representative submitted a letter from PERSON A, of COMPANY A. It is PERSON A’s opinion that a capitalization rate of %%%%%%%%% is appropriate for the subject property. In his letter, PERSON A indicates that not only is he familiar with the subject property, but that he understands the differences between the COUNTY 1 and COUNTY 2 markets. Taxpayer’s representative stated that PERSON A is the foremost person in the industry to determine the capitalization rate, that he has sold more rental units than anyone in the state, and conducts an extensive study to determine the capitalization rates.

The County’s representative agrees that COMPANY A is generally a good source for data on the rental market. However, he believes that in this instance, PERSON A has not provided any support for his opinion that the capitalization rate should be %%%%%%%%%. In addition, he indicated that capitalization rates vary, and that it could be somewhere between %%%%%%%%% and %%%%%%%%%. He indicated that it is difficult to determine the capitalization rate because there are a limited number of sales of rent-restricted properties.

The County utilized a capitalization rate of %%%%%%%%% to determine the value of the subject. The County’s representative indicated that this is consistent with all of the other rent-restricted properties in COUNTY. It is his position that the County has done a good job in valuing rent-restricted properties in the County, and that the opinion of PERSON A should not override that.

The County’s representative indicated that the capitalization rate should be lower because there is less risk associated with rent-restricted properties. In support of this contention, the County’s representative submitted information from the website of a company that specializes in tax credit properties, Foss and Company. The information from Foss and Company indicates that because rent-restricted properties are highly regulated, and the affordable housing program is competitive, it ameliorates most of the common risks associated with rental properties. Further,

Foss and Company notes that the result is a foreclosure rate of less than 1 since the inception of the program.

In addition, the County provided a January 2008 report from COMPANY A that indicates for 2007 the average capitalization rate along AREA A for 50-99 unit properties was %%%%. Because the subject is located in COUNTY, the County's representative believes there should be a slight increase in the capitalization rate above %%%%; however, he noted that it should not be more than %%%%.

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's representative submitted information on the actual income and expenses for the subject property, as well as a letter from PERSON A stating that in his opinion, a capitalization rate of %%%% was appropriate for the subject. The Commission finds that the Taxpayer has satisfied its burden to show an error in the value established by the Board of Equalization.

In support of his requested values, the Taxpayer's representative performed calculations using the income approach. He used actual income and expenditures and a %%%% capitalization rate to determine a value of \$\$\$\$\$. The County did not disagree with the actual income and expenditures used by the Taxpayer; however, the County's representative believes a %%%% capitalization rate is more appropriate. In support of its capitalization rate, the Taxpayer's representative submitted a letter of opinion from PERSON A, indicating that a capitalization rate of %%%% is appropriate for the subject. The County's representative acknowledged that COMPANY A, PERSON A's company, is generally a good source of information for data on the rental market in Utah. In fact, the County also relied upon information from COMPANY A in support of its capitalization rate. The County also submitted information indicating that the capitalization rate for rent-restricted properties should be lower because there is less risk involved, and that the average capitalization rate for AREA A is %%%%. However, the Commission finds the letter specifically addressing the subject property and the COUNTY 1 area more persuasive than general statements and averages for AREA A. The Commission finds that the Taxpayer has provided an evidentiary basis in support of its requested value of \$\$\$\$\$.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of parcel no. ##### was \$\$\$\$ as of the January 1, 2008 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
Salt Lake 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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