

10-1990
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2009
SIGNED: 05-09-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-1990</p> <p>Account No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2009</p> <p>Judge: Phan</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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP.
For Respondent: RESPONDENT REP., Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner (the Taxpayer) brings this appeal from the decision of the Salt Lake County Board of Equalization (the County) for the lien date January 1, 2009. This matter was argued in an Initial Hearing on February 1, 2011, in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the lien date at issue. The County Board of Equalization sustained the value. The Taxpayer is requesting that the

value be lowered to \$\$\$\$\$. The County representative at the hearing supported the value set by the Board of Equalization.

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.

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.

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.

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 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 parcel number ##### and is located at ADDRESS 1. It consists of 12.73 acres of land and improvements which is referred to by the name APARTMENT COMPLEX 1. There are 264 apartment units in the complex ranging in size from one bedroom units with 506 square feet up to three-bedroom units with 1,238 square feet. The apartment buildings were constructed in 1990. The complex has amenities that include a swimming pool, fitness center, business center and clubhouse area. There are also outdoor common areas and laundry areas.

The Taxpayer asked for a reduction of value to \$\$\$\$\$ based on an income approach calculation. The Taxpayer's representative had used the actual lease rates asked for the various units which resulted in potential rental income of \$\$\$\$\$. The Taxpayer's representative applied a 10% vacancy rate, allowed \$\$\$\$\$ for expenses, \$\$\$\$\$ for reserves to conclude a net operating income of \$\$\$\$\$. The representative then used a capitalization rate of %%% plus an effective tax rate of %%% for an overall rate of %%%. This resulted in a value for the property, rounded, of \$\$\$\$\$.

In support of the %%% capitalization rate, the Taxpayer submitted a Cap Rate Study published by CB Richard Ellis. That study looked at March 2009 multi-housing markets in a number of cities, including Salt Lake City. The study reported cap rates for March 2009, for Class B stabilized property ranging from %%% to %%%. The representative had also submitted a regional cap rate study from Real Estate Research Corporation, for Spring 2009. However, this grouped all western states together and did not specifically apply to Salt Lake County.

In addition to an income approach, the representative for the Taxpayer submitted five comparable sales. All five were apartment complexes; however three were located on the west side of Salt Lake County, in different neighborhood areas. One property at ADDRESS 2 was near the subject property. This was the APARTMENT COMPLEX 2 which has 246 apartment units. This complex was constructed in 1974 and had sold for \$\$\$\$\$ in June 2008. This is \$\$\$\$\$ per square foot. Property at ADDRESS 3, the APARTMENT COMPLEX 3, had sold for \$\$\$\$\$ in June 2008. This property has 450 units and was constructed in 1975. The sale price was \$\$\$\$\$ per square foot, or \$\$\$\$\$ per unit. From the sales, the Taxpayer's conclusion was a price per square foot of \$\$\$\$\$ for the subject property. This resulted in a value of \$\$\$\$\$. However, the Taxpayer placed more weight on the income indicator and requested a value of \$\$\$\$\$.

The County submitted an income approach calculation using the same potential gross income as the Taxpayer, the same vacancy rate and very similar expenses. The County's net operating income of \$\$\$\$ was very similar to the Taxpayer's of \$\$\$\$\$. The difference between the two was the capitalization rate. It was the County's contention that the appropriate capitalization rate for the lien date January 1, 2009 was %%% and not the %%% proposed by the Taxpayer. The County presented capitalization rate comparables from apartment buildings located on the east side of the county and on the west side of the county. He also looked at capitalization rates verses the date of sale. It was his conclusion that west side apartment cap rates had been around %%% and east side at %%%. He indicated that %%% was a county average for January 1, 2009. He also showed that rates had been going up in 2009 and 2010.

In addition to the income information, the representative for the County submitted photographs of the subject property and amenities, as well as for the comparable sales that had been offered by the Taxpayer and other sales that he had found. It was his contention that the Taxpayer's comparable sales were older apartments or apartments that were located on the west side, while the ones on the east side of the County had continued to sell for a lower capitalization rate.

After reviewing the information presented in this matter, and noting the that Taxpayer has the burden of proof to show error in the County value and provide a basis to support a new value, the value should remain as set by the County Board of Equalization. The main difference between the parties' values was the capitalization rate. The Taxpayer submitted one study that considered post lien date cap rates for a number of cities. This grouped all of Salt Lake City together and indicated a range of %%% to %%%. The County's rate of %%% was specific to the lien date of January 1, 2009. The County provided information that indicated the properties on the east side, which is where the subject is located, sold for a lower capitalization rate. These factors would both indicate a lower rate than %%% and even using the Taxpayer's study support going to the lower end of the range. The appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2009 lien date. 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner