

12-1665
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED
TAX YEAR: 2011
DATE SIGNED: 8-23-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1665 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Phan
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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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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: REPRESENTATIVE FOR TAXPAYER, Representative
For Respondent: RESPONDENT, Appeals Supervisor, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on May 14, 2013, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$\$, as of the January 1, 2011 lien date. The County Board of Equalization had reduced the value to \$\$\$\$\$. The Property Owner is requesting the value of the subject property be reduced to \$\$\$\$\$. The County's representative at the hearing

argued that the County Board of Equalization (the “County”) had lowered the value too much already and recommended that the appeal be denied.

APPLICABLE LAW

Utah Code §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 §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 §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 parcel that is the subject of this appeal is ##### of ##### parcels that make up the SUBJECT PROPERTY apartment complex located at ADDRESS, CITY, Utah. The apartment complex has ##### units, was constructed between YEAR'S and is considered by the County to be a Class "A" apartment structure. SENTENCE REMOVED. The unit sizes are larger than average and there are AMENITIES. There was a second associated parcel with the apartment complex which had been valued by the County at \$\$\$\$ and had not been appealed. For this hearing both parties had developed a value for the entire complex combining both parcels and then subtracting the \$\$\$\$ for the second parcel.

The Property Owner had recently purchased the subject property. The Property Owner was a knowledgeable buyer in the business of operating large apartment complexes and owns apartment buildings across the western states, including three other properties in Utah. This was an arms-length transaction between a willing buyer and a willing seller. The Property Owner had purchased the apartment complex, including both parcels of property, for \$\$\$\$ on March 26, 2009. If the \$\$\$\$ for the second parcel is subtracted from this purchase price it indicates a value of \$\$\$\$ for the subject parcel. This price was negotiated between the parties with the knowledge that these units had been constructed with a (X) plumbing pipe. It is now known that this type of plumbing will start to leak and it will need to be replaced soon. At the time the Property Owner had negotiated the purchase price, the Property Owner had determined that it would cost \$\$\$\$ to replace the plumbing and that was negotiated into the price. As of the lien date the plumbing has not yet been replaced.

The Property Owner's representative requested a reduction for the subject parcel to \$\$\$\$ based on an income approach considering pro forma rental income of \$\$\$\$\$, vacancy of %%% and other income of \$\$\$\$ for an effective gross income of \$\$\$\$\$. The total operating expenses used were \$\$\$\$ and the capitalization rate was %%% which indicated a total value for both parcels of \$\$\$\$\$. When the \$\$\$\$ was subtracted for the second parcel it indicated a value for the subject parcel of the \$\$\$\$\$. The Property Owner had also submitted a second calculation based on the actual rent received in 2010, which was a little higher than the pro forma rental projection. The actual rent had been \$\$\$\$\$. This calculation indicated a value for the subject of \$\$\$\$\$.

The County submitted an income calculation using the actual December 2010 rents received annualized, which indicated \$\$\$\$\$. It was the County's contention that the market was starting to improve so the December rents should be considered rather than rents throughout the

year. The County did not subtract a vacancy rate from this calculation. With the \$\$\$\$ in actual 2010 miscellaneous income, the County's effective gross income was \$\$\$\$\$. The County subtracted \$\$\$\$ for expenses and \$\$\$\$ for reserves to reach a net operating income of \$\$\$\$\$. The Property Owner had used a higher amount for reserves in its calculation. The County added the effective tax rate to the capitalization rate of %%%%. This resulted in an overall capitalization rate of %%%%. The County's capitalized value was \$\$\$\$\$. The County was willing to subtract from this the \$\$\$\$ to repair the plumbing and then the \$\$\$\$ for the second parcel. It was the County's conclusion that this would result in a value for the subject of \$\$\$\$\$ based on an income approach.

The County's representative also considered some comparable sales, but did not include in his analysis the purchase of the subject property. All of the apartment complexes used by the County as comparables were significantly smaller than the subject. The subject has ##### units in total, while the County's comparables had #####, #####, ##### and ##### units. These properties had sold for prices per unit ranging from \$\$\$\$ to \$\$\$\$\$. Except for ##### of the apartment complexes, these properties were Class B or Class C properties. THE COMPARABLE PROPERTY-1, was a Class A property and it was the project most similar in size to the subject, having ##### units. However, this comparable had sold significantly after the lien date in December 2011, for \$\$\$\$ per unit. The County had indicated that the market was improving but only made a time adjustment for this sale that occurred in December 2011 and not for the sale that occurred in August 2010. Additionally, the County only made an adjustment for project size to the smallest apartment project comparable, the one with ##### units. No adjustment was made for project size to any of the other units. It was the County's conclusion from the five comparables that the subject would have sold for \$\$\$\$ per unit.

The County did not provide information to dispute that the purchase of the subject property had been an arms-length transaction between a knowledgeable, willing buyer and seller. The County had argued that the Property Owner had fixed the property up after the purchase, as there had been charges for the replacement of carpet and some flooring (approximately \$\$\$\$\$). The County also argued against using the negotiated purchase price because, as they had earlier stated, the market was improving.

One of the dissimilarities between the County and the Property Owner's income approach was the capitalization rate. The County used a capitalization rate of %%%% to which it had added the effective tax rate for an overall rate of %%%%. The Property Owner's overall rate was %%%%. The County argued that its lower rate was supported with the same five

comparable sales relied on in the sales approach. It was the County's contention that these properties had sold for capitalization rates ranging from %%%% to %%%%. However, as noted above these were smaller projects in comparison to the subject. Portions of a report from ARA discussing capitalization rates for apartment projects with over 100 units in Salt Lake County were provided. This report indicated an average capitalization rate of %%%% and not enough sales to determine a capitalization rate for the Class A properties. The same report discussed that 2009 had been a slow year in terms of sales volume and 2010 had been anemic. Additionally the report discussed rent growth and indicated that rent had begun to increase during the last two quarters of 2010, but showed an increase of only %%%%.

The Property Owner's representative pointed to the dissimilarities between the subject and the comparable properties considered by the County and argued that the larger the project, the fewer potential buyers and the prices per unit tended to be lower. Additionally, he argued the sale of the subject in March 2009 should not be disregarded based on the date of sale because it was as relevant time wise as the post lien date sale of COMPARABLE PROPERTY-1. The subject property had sold in March 2009 for \$\$\$\$ per unit. The Property Owner's representative argued that the subject property was very well maintained, so the maintenance and reserve costs were higher than average, but because of that they were able to charge the higher rents.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County, but also provide an evidentiary basis to support a new value. Property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code §59-2-103. Utah Code §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. The subject property is a large Class A apartment project with ##### units and it had sold ##### months prior to the lien date between a willing buyer and seller. Although the County has a comparable sales indicator with sales nearer to the lien date, it does not adequately take into account the size of the subject project. At ##### units the potential buyers are limited and a size adjustment seems warranted. Even the income approach of the County's is affected by the smaller projects because of the County's capitalization rate. Upon review of the parties' evidence a value of \$\$\$\$ is supported for the subject property, based on the sale price and of the subject of \$\$\$\$\$, minus the \$\$\$\$\$ for the second parcel. The evidence did not indicate much market improvement occurring between the sale and the lien date at issue and trying to determine a value for the subject based on sales of much smaller properties is more speculative. This value is supported by the Property Owner's

income approaches, with some higher expenses being required to maintain the property at a high standard so that the higher rents may be charged.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject parcel was \$\$\$\$\$, as of the January 1, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner