

13-1254
TAX TYPE: PROPERTY TAX – LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 8-19-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, (THE ASSESSOR) Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, ex rel. TAXPAYER Respondent.	INITIAL HEARING ORDER Appeal No. 13-1254 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2012 Judge: Jensen
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This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the 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:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, for the Assessor
REPRESENTATIVE-2 FOR PETITIONER, for the Assessor
For Respondent: No one appeared
For Ex. Rel Party: REPRESENTATIVE FOR TAXPAYER, for the Taxpayer

STATEMENT OF THE CASE

The above-named Petitioner (the "Assessor") brings this appeal from the decision of the Board of Equalization of Salt Lake County. The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on April 14, 2014. The Assessor is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this

matter is January 1, 2012. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization reduced the value to \$\$\$\$\$.

At the hearing, the Assessor requested that the value be increased to \$\$\$\$\$. The Ex Rel Party (the “Taxpayer”) requested that the value set by the board of equalization be reduced to \$\$\$\$\$.

APPLICABLE LAW

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 provide by law. Utah Code Ann. §59-2-103 (1).

“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. Utah Code Ann. §59-2-102(12).

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

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 requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained 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. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 590 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is parcel no. #####-1, located at ADDRESS in CITY, Utah. It consists of a #####-unit apartment complex on ##### of an acre. It was built in YEAR as a class C rental property. It has ##### two-bedroom units and ##### one-bedroom units. It is part of an economic unit with an associated parcel no. #####-2 (the “Associated Parcel”). The two parcels total ##### acres. The parties agree that the economic unit should be valued together and that the undisputed value of the Associated Parcel at \$\$\$\$\$ should be deducted from the economic unit to arrive at the value of the subject property.

The Assessor has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Assessor provided a description of problems with the board of equalization using valuation methods that varied from standard appraisal practice. First, the Assessor noted that the board of equalization used 15% stabilized vacancy for a property that was on its way to being fully leased as of the lien date. Second, the board of equalization value included a deduction for 6% leasing commissions for five years. The Appraiser provided evidence that five years is longer than typical leases in apartments and that apartment building owners or managers rarely, if ever, pay leasing commissions. Third, the Appraiser provided a discussion of carrying costs that would be appropriate for triple net (“NNN”) commercial leases but were not typical of or appropriate for apartment buildings.

The Assessor provided an income approach to value the subject property. The Assessor used market rents of \$\$\$\$ per month per unit for the ##### one-bedroom units and \$\$\$\$ per month per unit for the ##### two-bedroom units. This calculated to an annual potential gross income of \$\$\$\$\$. From this, the Assessor deducted \$\$\$\$ for 5% vacancy and added \$\$\$\$ for 2% miscellaneous income for an effective gross income of \$\$\$\$\$. The Assessor deducted expenses of \$\$\$\$ per square foot or \$\$\$\$ and reserves of \$\$\$\$ per unit or \$\$\$\$ for a net operating income of \$\$\$\$\$. The Assessor capitalized this at 7.41% for a capitalized value of \$\$\$\$\$. The Assessor deducted \$\$\$\$ for the value of the Associated Parcel to arrive at a final rounded value determination of \$\$\$\$\$.

In support of its market rents, the Assessor relied on rents from four comparable properties as follows:

Comparable No.	1	2	3	4
Apartment	NAME-1	NAME-2	NAME-3	NAME-4
Address	ADDRESS-1	ADDRESS-2	ADDRESS-3	ADDRESS-4
Number of Units	##### Units	##### Units ¹	##### Units	##### Units
Unit Mix	#####1-bd \$\$\$\$ #####2-bd \$\$\$\$	##### 1-bd \$\$\$\$ ##### 2-bd \$\$\$\$	##### 1-bd \$\$\$\$ ##### 2-bd \$\$\$\$	##### 1-bd \$\$\$\$ ##### 2-bd \$\$\$\$
Year Built	YEAR	YEAR	YEAR	YEAR
Square Feet	#####	#####	#####	#####
Average Unit Size	#####	#####	#####	#####

The Appraiser noted that the units in the subject property had all electric heat and that this was less desirable than units with gas heat since gas heat has lower monthly operating costs. The Appraiser’s

¹ The Assessor did not explain why its total unit number did not match the number of units provided for unit mix.

representative indicated that comparable number 4 listed above had electric heat and that the first three comparables had gas heat. The Assessor’s representative indicated that she had completed a study of market rents with electric and gas heat and had determined that apartments with gas heat rent, on average, for \$\$\$\$ per month more than units with electric heat. Deducting \$\$\$\$ per month for the adjusted rents for the first three comparables indicated rents for one bedroom units with a mean of \$\$\$\$ per month and a median of \$\$\$\$ per month. For two bedroom units, the adjusted rents had a mean of \$\$\$\$ per month and a median of \$\$\$\$ per month.

In support of its 5% vacancy rate the Assessor relied on the most recent months’ vacancy at the subject property. The Assessor presented vacancy information for the 11 months previous to the January 2012 as follows:

Month	No. Vacant	Percent Vacant	Notes
February 2011	### vacant	%% percent	
March 2011	### vacant	%% percent	August and March had the highest vacancy of %
April 2011	### vacant	%% percent	
May 2011	### vacant	%% percent	
June 2011	### vacant	%% percent	
July 2011	### vacant	%% percent	
August 2011	### vacant	%% percent	August and March had the highest vacancy of %
September 2011	### vacant	%% percent	
October 2011	### vacant	%% percent	
November 2011	### vacant	%% percent	UNITS VACANT
December 2011	### vacant	%% percent	UNITS VACANT AND NEW TENANTS

The Assessor’s representative calculated a mean vacancy of 10.7% and a median vacancy of 12%. These are presumably figures for twelve months, since they are lower than the figures for the eleven months provided. The Assessor also presented overall apartment vacancy from Equimark/ARA as follows: 2007 – 4.8%, 2008 – 6.8%, 2009 – 8.6%, 2010 – 6.2%, and 2011 – 5.2%.

The Assessor’s representative indicated that the Assessor’s 7.41% capitalization rate reflected an effective property tax rate of .91% plus a capitalization rate without load for taxes of 6.5%. The Assessor represented .91% as the effective tax rate for 2011. The Taxpayer did not challenge this figure. The Assessor’s representative explained that using property tax as an item of expenses would also account for the effect of property tax for the profit and loss statement of a business. However, because such a

calculation would assume a tax amount, which was the very figure the income approach was meant to calculate, it made more sense to use a capitalization rate without taking tax into account and to add the effective tax rate into the capitalization rate. In support of the 6.5% unloaded capitalization rate, the Assessor provided evidence of the sales of six comparable properties as follows:

Sale Date	Address	Yr. Const.	# of Units	Cap. Rate
12/2011	ADDRESS-5	YEAR	###	% % % % %
10/2011	ADDRESS-6	YEAR	###	% % % % %
12/2011	ADDRESS-7	YEAR	###	% % % % %
9/2011	ADDRESS-8	YEAR	###	% % % % %
7/2011	ADDRESS-9	YEAR	###	% % % % %
10/2011	ADDRESS-10	YEAR	###	% % % % %

In addition to its income approach to value, the Assessor presented a sales comparison approach to value. For this, the Assessor relied on the sales of four comparable properties with sale dates in May 2012, June 2012, December 2011, and March 2010. The Assessor analyzed these sales to compare them to the subject property per square foot, per room, and per unit. The four comparables had selling prices that calculated to selling prices per square foot of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Assessor’s representative made a 4% time of sale adjustment to the March 2010 sale to give time-adjusted values per square foot of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$.

The Assessor made additional adjustments for differences between the subject property and the comparable properties for factors such as age and condition, parking, and heat type (gas vs. electric). After making these adjustments, the comparable properties indicated adjusted values per square foot of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Assessor’s representative reconciled these to a final indicated value per square foot of \$\$\$\$\$, or a rounded value of \$\$\$\$\$ for the ##### square feet at the subject property.

The Assessor made similar analysis on a per-room basis. The same comparable properties had per-room selling prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The time adjustment for the fourth comparable changed the per room values to \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. After making adjustments for factors such as age and condition, parking, and heat type (gas vs. electric), the comparable properties indicated adjusted values per room of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Assessor’s representative reconciled these to an indicated value of \$\$\$\$\$ per room or a rounded value of \$\$\$\$\$ for the ##### rooms at the subject property.

The Assessor made similar analysis on a per-unit basis. The same comparable properties had per-unit selling prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Assessor’s representative made no time

adjustment to the fourth sale for the Assessor’s per-unit analysis. After making adjustments for factors such as age and condition, parking, and heat type (gas vs. electric), the comparable properties indicated adjusted values per unit of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The Assessor’s representative reconciled these to an indicated value of \$\$\$\$\$ per unit or a rounded value of \$\$\$\$\$ for the ##### units at the subject property. The Assessor’s representative indicated that deducting \$\$\$\$\$ for the value of the Associated Parcel from even the lowest sales comparison value indicated a sales comparison approach to value of over \$\$\$\$\$. The Assessor reconciled this with the \$\$\$\$\$ income approach value to a final value indication of \$\$\$\$\$.

The Taxpayer provided an income approach to value. The Taxpayer relied on actual 2011 income of \$\$\$\$\$ and actual 2011 expenses of \$\$\$\$\$ for a net operating income of \$\$\$\$\$. The Taxpayer capitalized this net operating income at 9.6% for an indicated value of \$\$\$\$\$. The Taxpayer listed its expenses are as follows:

PR Tax	\$\$\$\$\$
Employ. Leasing Wage	\$\$\$\$\$
Maint.	\$\$\$\$\$
Repair	\$\$\$\$\$
Advert.	\$\$\$\$\$
Prof. Fees	\$\$\$\$\$
Refunds	\$\$\$\$\$
Insurance	\$\$\$\$\$
Office	\$\$\$\$\$
Bank Ch.	\$\$\$\$\$
Utilities	\$\$\$\$\$
Prop. Taxes	\$\$\$\$\$
IRS	\$\$\$\$\$
Utah Tax	\$\$\$\$\$
Deposit Refunds	\$\$\$\$\$
Rounded total	\$\$\$\$\$

The Taxpayer acknowledged that some of its vacancies and expenses might be higher than comparable properties. The Taxpayer indicated that increased utility costs associated with the electric heat at the subject property cause higher vacancy, lower rents, and increased advertising and turnover. The Taxpayer indicated that as much as it would like to increase rents, the market would not bear the rent increases without an unacceptable increase in vacancies. The Taxpayer’s representative explained that this was particularly true because the subject property lacks certain amenities such as laundry hookups, central air, and balconies.

The Taxpayer did not provide support for its 9.6% capitalization rate other than to say that it was consistent with what the board of equalization had used. The Assessor’s representative argued that the

9.6% rate must have included a load for property tax since its data indicated a 6.5% rate without the effect of property tax. The Assessor argued that to include property tax as an item of expense, as the Taxpayer had done, would double count property taxes. The Assessor also indicated that the Taxpayer had several other tax items in its expenses that would be inappropriate to use as expenses since appraisers generally capitalized pre-tax income when doing an income approach to value.

There are common threads to the disparate approaches to value presented by the parties. Both used an income approach to value. The Assessor used comparable properties; the Taxpayer used actual rents and expenses. The Taxpayer's actual income has the appeal of fully accounting for problems with electric heat, lack of central air, and lack of amenities such as laundry and balconies. It also takes into account vacancies that seem to flow from renting to (X). While the Assessor attempted to adjust for these factors, there is no showing that the Taxpayer is making choices to avoid receiving full rents. On that basis, the Taxpayer's actual income of \$\$\$\$\$ appears reasonable.

In terms of expenses, the Assessor is correct that the Taxpayer's expenses include several items of tax. The Taxpayer provided no compelling reason to include income taxes as expense items. While it may be appropriate for the Taxpayer to include property taxes as an expense item, it does seem more reasonable to factor the effective tax rate into the capitalization process. This leaves reasonable Taxpayer expenses as follows:

Employ. Leasing Wage	\$\$\$\$\$
Maint.	\$\$\$\$\$
Repair	\$\$\$\$\$
Advert.	\$\$\$\$\$
Prof. Fees	\$\$\$\$\$
Refunds	\$\$\$\$\$
Insurance	\$\$\$\$\$
Office	\$\$\$\$\$
Bank Ch.	\$\$\$\$\$
Utilities	\$\$\$\$\$
Deposit Refunds	\$\$\$\$\$
Total	\$\$\$\$\$

Deducting \$\$\$\$\$ expenses from the Taxpayer's actual income of \$\$\$\$\$ gives a net operating income of \$\$\$\$\$. Capitalizing this net operating income at 7.41% yields a capitalized value of \$\$\$\$\$. The 7.41% capitalization rate appears reasonable given the Assessor's support for it as well as any lack of any meaningful challenge to it from the Taxpayer.

The Commission realizes that a capitalized value of \$\$\$\$\$ is lower than the values indicated in the Assessor's sales comparison approach. However, given the differences between the subject property

and the comparable sales, there is good reason to favor the income approach to value based on actual income and expenses rather than a sales comparison approach.

Because the capitalized value of \$\$\$\$\$ incorporates use of a related parcel with an undisputed value of \$\$\$\$\$, it is necessary to deduct \$\$\$\$\$ from \$\$\$\$\$ to arrive at a rounded value of \$\$\$\$\$ for the subject property. This shows error in the board of equalization value of \$\$\$\$\$ and provides a sound evidentiary basis to value the subject property at \$\$\$\$\$ as of the lien date.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2012 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner