

09-2453
LOCALLY ASSESSED PROPERTY TAX
SIGNED 06-01-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2453 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2008 Judge: Chapman
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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:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER REP., Representative
 For Respondent: RESPONDENT REP., from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

 This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on May 11, 2010.

 At issue is the fair market value of the subject property as of January 1, 2008. The subject is a retail development adjacent to the LANDMARK and is located at ADDRESS 1 in CITY 1, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject was

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assessed for the 2008 tax year. The taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to increase the subject's value to \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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 provided by law.”

Utah Admin. Rule R884-24P-20 (“Rule 20”) provides guidance in valuing construction works in progress, as follows in pertinent part:

- A. For purposes of this rule:
 - 1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.
.....
 - 6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. . . .
 - 7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.
.....
- B. All construction work in progress shall be valued at "full cash value" as described in this rule.
- C. Discount Rates
For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.
- D. Appraisal of Allocable Preconstruction Costs.
 - 1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:
 - a) a detailed list of preconstruction cost data is supplied to the responsible agency;
 - b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.
 - 2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated

value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined [under] D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

- a) The full cash value of the project expected upon completion.
- b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

- c) The percent of the project completed as of the lien date.

....

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction. . . , the expected date of completion, and the percent of the project completed, the assessor shall do the following:

....

- b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;
- c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

....

UCA §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”

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 Comm'n*, 590 P.2d 332, (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 comprised of 15.18 acres of land and a retail center. The retail center includes a large anchor store (STORE 1), two medium-sized anchor stores (STORE 2 and STORE 3) and a number of smaller retail stores and restaurants. Construction on the retail center began in YEAR and should be completed in YEAR. As of the January 1, 2008 lien date, the STORE 1 store was 100% complete and the STORE 2 store was 90% complete. Otherwise, most of the other stores only had their “shells” built, and several “pads” in the project were completely empty as of the lien date.

The subject property is a locally-assessed, commercial property that is a “construction work in progress,” as defined in Rule 20(A)(1). Rule 20 provides the methodology to value construction works in progress. Both parties submitted income approaches that attempt to value the subject property in accordance with the rule. Both parties’ income approaches are based on the rent revenues projected for the year ending December 31, 2010 (i.e., once construction is anticipated to be complete).

The taxpayer used 2010 projected rents to estimate “stabilized” net operating income (“NOI”), which it capitalized at %%% to estimate a “projected stabilized value” of \$\$\$\$ for the project. To this projected stabilized value, the taxpayer made deductions of approximately \$\$\$\$ to account for three years of short-term rent losses and “lease-up” costs associated with the stores that were not built or leased as of the lien

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date. The taxpayer then deducted \$\$\$\$ of construction costs (both direct and indirect costs) that it contends were needed to complete the project as of the lien date. Based on this methodology, the taxpayer estimates that the subject's value as a construction work in progress is \$\$\$\$ as of the 2008 lien date. The taxpayer asks the Commission to reduce the subject's value to this amount.

The County, on the other hand, developed a discounted cash flow ("DCF") model to estimate the value of those stores in the project that were complete or under construction as of the lien date. The County did not estimate the value, in its DCF, of those stores whose construction had not begun as of the lien date. Instead, the County valued the land associated with these latter stores as vacant land. It added this land value to its DCF value to determine a total value for the subject property.

Based on the County's methodology, its DCF model did not include the 2010 rent revenues of those stores whose pads were not under construction as of the lien date. However, the County did include three years of rent loss and lease-up costs associated with the portion of the project completed or under construction as of the lien date. The Division also determined that the taxpayer would expend \$\$\$\$ to complete those portions of the project already under construction as of the lien date. The County, however, limited the construction costs it used in its model to "direct" costs only, arguing that the "indirect" costs that the taxpayer also included in its methodology would have been incurred prior to construction and, thus, prior to the lien date. With its DCF model, the County estimated that the value of the stores either complete or under construction as of the lien date was \$\$\$\$.

For the stores whose pads were not under construction as of the lien date, the County estimated a land value for the empty pads of \$\$\$\$ (\$\$\$\$ per square foot for 1.07 acres of vacant land). The County added the \$\$\$\$ land value to the \$\$\$\$ DCF value to derive a total value of \$\$\$\$ for the subject property. The County asks the Commission to increase the subject's value to this amount.

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Both parties ask the Commission to change the \$\$\$\$ value established by the County BOE. As a result, each party bears the burden not only to show that the current value is incorrect, but also to provide a sound evidentiary basis to change the value to the amount it proposes. In this case, neither party has provided sufficient evidence to show that the subject's current value of \$\$\$\$ is incorrect.

Taxpayer's Proposed Value. The taxpayer's proposed value of \$\$\$\$ is not more convincing than the subject's current value of \$\$\$\$. First, the taxpayer used an %%% capitalization rate to derive its proposed value. The taxpayer stated that it used this rate because the Commission determined that an %%% rate was appropriate to value a stand-alone restaurant in the LANDMARK in another 2008 appeal, specifically *USTC Appeal No. 09-0970* (Initial Hearing Order Nov. 5, 2009). As noted in that appeal, the Commission made its decision based on testimony indicating that restaurants are riskier than general retail buildings. If this is correct, the subject's capitalization rate would arguably be less than %%%. Furthermore, in *Appeal No. 09-0970*, the Commission stated that capitalization rates used in a decision may or may not be applicable to a future decision, depending on the evidence submitted in each appeal. In the current appeal, the County proffered comparable capitalization rates that support the %%% rate it used in its income approach. Based on the evidence proffered at the Initial Hearing in this matter, a %%% capitalization rate appears to be more appropriate than the %%% rate proposed by the taxpayer. This change alone would increase the value derived with the taxpayer's income approach from \$\$\$\$ to \$\$\$\$.

Second, in the taxpayer's approach, it deducted \$\$\$\$ of construction costs that it determined were necessary to complete the project. The \$\$\$\$ of total costs included \$\$\$\$ of "indirect" costs. The County contends that all of the indirect costs were incurred prior to construction beginning in 2007 and, thus, should not be considered when determining the value of the subject property as a construction work in progress. The taxpayer's representative stated that he was new to the case and that he did not know when the indirect costs were incurred. However, as a general rule, he believed that the amount of indirect costs incurred

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after the lien date would be equal to at least 25% of the direct costs incurred after the lien date. The direct costs incurred after the lien date amount to \$\$\$\$\$. 25% of this amount equates to \$\$\$\$\$. If the taxpayer's methodology were revised to reflect \$\$\$\$\$ of indirect costs and a %%% capitalization rate, a value of approximately \$\$\$\$\$ would be derived for the subject property. This value is relatively close to the subject's current value of \$\$\$\$\$. For these reason, the taxpayer has not met its burden to show that the subject's current value should be reduced.

County's Proposed Value. The County's proposed value of \$\$\$\$\$ is not more convincing than the subject's current value of \$\$\$\$\$. It is arguable that Rule 20 anticipates the County treating the entire subject property as a construction work in progress instead of treating only those portions under construction as of the lien date as such. However, even if the County properly excluded those portions of the property where construction began after the lien date from its construction work in progress analysis, the County submitted no evidence to support its contention that the taxpayer incurred all of its indirect costs prior to the January 1, 2008 lien date.

The County appraiser stated at the hearing that he believed that most of the indirect costs were expended prior to construction having begun. However, he had not investigated and determined the timing of indirect costs to determine whether they were incurred before or after the lien date. The taxpayer provided a breakdown of its \$\$\$\$\$ of indirect costs. It is plausible that certain indirect costs described as architecture costs and planning and engineering costs may have been incurred prior to the beginning of construction. However, it is also plausible that a portion of these costs continued to accrue throughout the construction process. In addition, several of the indirect costs, such as insurance, property tax, construction management and onsite supervisor costs, would appear to continue to accrue during all phases of construction, including that construction that occurred after the lien date. Without evidence to the contrary, the Commission is not convinced that all \$\$\$\$\$ of the project's indirect costs occurred prior to the January 1, 2008 lien date. Even if

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only \$\$\$\$ of the indirect costs occurred after the lien date, the value derived with the County's methodology would be more in line with the subject's current value of \$\$\$\$ than the County's proposed value of \$\$\$\$. For these reason, the County has not met its burden to show that the subject's current value should be increased. In conclusion, the subject's current value should be sustained.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject's current value of \$\$\$\$ for the 2008 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 taxpayer'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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

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D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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