

01-1550
Locally Assessed Property
Signed 06/24/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	Appeal No.: 01-1550
)	
v.)	Account No.: MULTIPLE - 4
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
IRON COUNTY, STATE OF UTAH,)	Tax Years: 2001 and 2002
)	
Respondent.)	Judge: Chapman

Presiding:

Marc B. Johnson, Commissioner
Kerry Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Owner
PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Iron County Assessor
RESPONDENT REPRESENTATIVE 2, Appraiser, Iron County
Assessor's Office
RESPONDENT REPRESENTATIVE 3, MAI

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 16, 2003. This was a continuation of the Formal Hearing initially begun on March 20, 2003, relating to the 2001 tax year only. At this hearing, the parties agreed to consolidate Appeal No. 01-1550 (for the 2001 tax year) and Appeal No. 02-1885 (for the 2002 tax year) into one appeal for adjudicative purposes and for the Commission to hear the combined appeal at a later date. On March 23, 2003, the Commission consolidated the cases into Appeal No. 01-1550.

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For both tax years pertaining to this matter, the appeal involves four separate parcels, identified as parcel numbers #####-1, #####-2, #####-3, and #####-4. All four parcels primarily consist of rental storage units located in CITY, Utah.

Parcel No.	2001 Tax Year Value		2002 Tax Year Value	
	BOE Value	Petitioner's Requested Value	BOE Value	Petitioner's Requested Value
#####-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	\$\$\$\$\$	W/ above parcel	\$\$\$\$\$	W/above parcel
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-4	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>
TOTAL Four Parcels	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

For the 2001 tax year, the Iron County Board of Equalization (“BOE”) set the value of the four parcels at issue at \$\$\$\$\$ for #####-1, \$\$\$\$\$ for #####-2, \$\$\$\$\$ for #####-3, and \$\$\$\$\$ for #####-4, for a total aggregate value of \$\$\$\$\$. This total value included an assessment of \$\$\$\$\$ for a residential building, in addition to the value for the storage units. Petitioner appealed the 2001 BOE decisions to the Commission and, after an Initial Hearing, the Commission sustained the values set by the BOE.

While the 2001 case was pending before the Commission, the BOE considered Petitioner's appeal for the 2002 tax year. For the 2002 tax year, the BOE set the value of the parcels at \$\$\$\$\$ for #####-1, \$\$\$\$\$ for #####-2, \$\$\$\$\$ for #####-3 and \$\$\$\$\$ for #####-4, for a total

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aggregate value of \$\$\$\$\$. This total value included an assessment of \$\$\$\$ for a residential building, in addition to the value for the storage units. Petitioner appealed the 2002 BOE decisions to the Commission. The parties agreed to consolidate the Commission appeal on these parcels for the 2002 tax year with the appeal already in progress for the 2001 tax year, thereby waiving their right to an Initial Hearing in the matter for the 2002 tax year and having the combined appeal for these two tax years heard in a Formal Hearing.

At the Formal Hearing, PETITIONER REPRESENTATIVE 1, owner of PETITIONER (and hereinafter referred to as the "Petitioner"), indicated his intent to submit into evidence a number of documents that he had mailed to the Commission on December 12, 2003. The Respondent objected to the Commission receiving the documents into evidence because the Respondent had only received them the morning of the hearing and had not had sufficient time to analyze them. The Commission ruled not to bar the documents from being received as evidence even though the Petitioner had failed to submit them to the Respondent in a timely manner. However, the Respondent was allowed a 30-minute recess to review the documents and was also given a 10-day period subsequent to the hearing in which it could submit a written response relating to the documents. The Respondent did not submit a written response subsequent to the hearing.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. To prevail in an appeal concerning the fair market value of its property, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

3. Pursuant to Utah Code Ann. §59-2-102(12) and effective on the lien dates of both years at issue, “fair market value” is defined as:

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.

In 1998, the Legislature removed from the definition of “fair market value” language referring to “adjustments for intangible values under Sections 59-2-304 and 59-2-210.”

SUMMARY

Facts and Arguments Offered by Petitioner

1. In its petitions to appeal the BOE decisions to the Commission, the Petitioner asserted a total value of \$\$\$\$\$ for the four parcels at issue, for both the 2001 and 2002 tax years.

2. As evidence to establish a cost approach to valuing the properties, Petitioner submitted an affidavit from WITNESS 1, a licensed contractor. WITNESS 1 stated in the affidavit that he had contracted with the Petitioner during the past four years to build new steel storage units,

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with contract prices averaging between \$\$\$\$\$ and \$\$\$\$\$ per square foot (Exhibit P-6). Because of these contract prices, the Petitioner estimated the cost new of the subject parcels to be \$\$\$\$\$ per square foot of storage space. A price of \$\$\$\$\$ per square foot multiplied by the 262,380 square feet of storage space results in a cost new of \$\$\$\$\$ for the four subject parcels.

3. Petitioner also argued that an alternative method to value the four parcels would be to take their total assessed values and subtract the amount needed to “upgrade” the buildings to account for “deferred maintenance.” As evidence of deferred maintenance, the Petitioner presented affidavits signed by PETITIONER REPRESENTATIVE 2 (Exhibit P-4) and WITNESS 2 (Exhibit P-5). The Petitioner asserted that PETITIONER REPRESENTATIVE 2’s affidavit showed the amount to upgrade the storage units to current building codes and regulations (to retro-fit or replace doors, petitions and roofs) would be \$\$\$\$\$ and that WITNESS 2’s affidavit showed a cost of \$\$\$\$\$ to upgrade the electrical systems to current codes and regulations. Petitioner argued that the total of these two amounts, \$\$\$\$\$, should be deducted from the assessed value to account for “deferred maintenance.” Such a deduction would result in a value for the four parcels of approximately \$\$\$\$\$, or \$\$\$\$\$ per square foot of storage space.

4. Petitioner also offered a comparable sale into evidence (Exhibit P-2). He argued that his own purchase of parcel #####-4 on April 30, 1997 not only established the value of that specific parcel, but also could be used to estimate the market values of the remaining parcels under appeal, as well. The Petitioner’s exhibit showed that parcel #####-4 sold for \$\$\$\$\$ (or about \$\$\$\$\$ per square foot of storage space) in 1997. Testimony also established that a building costing approximately \$\$\$\$\$ had been built on the parcel since its purchase. In addition, the Petitioner

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presented a history of the assessed values of the four parcels at issue (Exhibit P-3). This exhibit showed that parcel #####-4 was assessed at the \$\$\$\$ sales price in 1998, which he stated was due to the county BOE finding that the sale reflected the fair market value of the parcel. The Petitioner also asserted that the 1997 purchase price for parcel #####-4 at \$\$\$\$ per square foot was supported by the sale of COMPANY, another storage facility in CITY, which sold in 1994 at a price of approximately \$\$\$\$ per square foot.

5. Petitioner submitted an appraisal by APPRAISER, MAI, with a valuation date of January 1, 1996 (Exhibit P-9). The appraisal estimated the fair market value of a majority of the parcels and buildings currently under appeal, but also included a parcel not under appeal in this matter. Also, the appraisal did not include estimates of value for parcel #####-4, which the Petitioner bought in 1997, and for buildings built on parcel #####-3 subsequent to the 1996 appraisal date. Nevertheless, the Petitioner used the appraisal as a starting point from which to estimate the values of the buildings under appeal. First, the Petitioner took the value estimated by the appraisal for parcels #####-3, #####-2, and #####-1, as they existed in 1996. Petitioner then added to this value the \$\$\$\$ purchase price for parcel #####-4 and the depreciated cost of buildings subsequently built on parcel #####-3 to arrive at a total value of \$\$\$\$ for the four parcels (as shown on Exhibit P-1 in the column with the heading "APPRAISER Appr"). This total value equates to a value of approximately \$\$\$\$ per square foot. At the hearing, the Petitioner admitted that another building had been built on parcel #####-4 after its purchase in 1997. The Petitioner estimated that this additional building would add approximately \$\$\$\$ to the total value of the four parcels, which would result in a value of approximately \$\$\$\$ per square foot for the four parcels.

6. Petitioner also argued that the properties should be valued on the basis that tangible property depreciates to a value of zero over time. To recognize this fact, the Petitioner suggested that the Commission take the actual costs he paid for the all properties from 1980 through 1999 and deduct depreciation based on the 39 straight-line depreciation schedule employed by the Internal Revenue Service. He argued that this is the most accurate of all approaches to calculate the fair market value of the subject properties because it does not capture “intangible” business income value and because it values the real property in a manner similar to that by which tangible personal property is valued in Utah (see Exhibit P-8). Using this approach, the Petitioner calculated the value of the four subject parcels to be \$\$\$\$\$, as set forth in Exhibit P-7 (also reflected in “Plaintiff Value” column of Exhibit P-1). Such a value would reflect a value of approximately \$\$\$\$\$ per square foot.

7. Petitioner also challenged a number of elements of the appraisal submitted by the Respondent, which was prepared by RESPONDENT REPRESENTATIVE 3 (Exhibit R-1). These elements included the appraiser’s application of “fair market value,” his choice of capitalization rates, his choice of comparable sales, and his lack of a cost approach to value. The Petitioner also asserted that the appraiser did not use the proper rents and vacancies shown on the Petitioner’s actual rent rolls for the years at issue, arguing that the appraiser included rents for properties not under appeal and did not use the actual vacancy rates of approximately 15%.

Facts and Arguments Offered by Respondent

1. Respondent submitted an appraisal prepared by RESPONDENT REPRESENTATIVE 3, MAI, as evidence of the subject properties’ fair market value (Exhibit R-1). In his appraisal, dated November 25, 2003, RESPONDENT REPRESENTATIVE 3 estimated the

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fair market value of the four subject properties as of January 1, 2001, and January 1, 2002, the lien dates of the tax years at issue. For each of the tax years, the Respondent's appraiser estimated the total fair market value of the four parcels to be \$\$\$\$\$.

2. Respondent's appraiser omitted the cost approach from his appraisal. He did so under the argument that the relatively old age of many of the storage units and the difficulty in estimating the amounts of their accrued depreciation rendered an estimate of their values using the cost approach unreliable.

3. Respondent's appraiser utilized the sales comparison approach in his appraisal. He identified four comparable sales, two in southern Utah and one each in the central and northern sections of Utah. One of the comparables, a CITY property, sold for \$\$\$\$\$ per square foot in February 2000. The other three sales occurred in 1996, 1999, and 2000 at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. Using this information, the appraiser estimated a \$\$\$\$\$ value for the four subject parcels through the sales comparison approach.

4. The Respondent's appraiser included an income capitalization approach to value in his appraisal. This approach relied upon a combination of actual and market rents, vacancies, and expenses to arrive at net operating income (NOI) of \$\$\$\$\$. This NOI was then capitalized at %%% to arrive at an estimated total value of \$\$\$\$\$ for the four parcels under appeal.

5. The Respondent's appraiser correlated the \$\$\$\$\$ value he determined through the sales comparison approach and the \$\$\$\$\$ value he determined through the income capitalization approach. He determined that the income approach best reflected the fair market value of the subject

properties and arrived at a final correlated total value of \$\$\$\$ for the properties at issue for each of the tax years.

6. Concerning the Petitioner's approaches to valuation, the Respondent argued that the \$\$\$\$ deferred maintenance estimated by the Petitioner for the subject properties would not affect the properties' fair market values to the extent the Petitioner contended. The Respondent stated the costs estimated by PETITIONER REPRESENTATIVE 2 and WITNESS 2 to "upgrade" the buildings would not be the costs needed to get the buildings into a salable or rentable state.

7. The Respondent also argued that the cost to build storage units, as identified in WITNESS 1's affidavit to be approximately \$\$\$\$ per square foot, did not include soft costs, such as entrepreneurial profit, asphalt, architectural plans, permits, and land. As a result, the Respondent contended that the actual cost per square foot for storage units would be significantly higher than the amount stated in WITNESS 1's affidavit.

8. The Respondent not only argued that APPRAISER'S appraisal, which the Petitioner submitted into evidence, was flawed, but that it also had little or no relevance as evidence of the subject properties' values for the two tax years at issue. Because the appraisal's January 1, 1996 effective date was five years prior to the 2001 lien date and six prior to the 2002 lien date and because market conditions for storage units, namely increasing rents, had changed during this interim of time, the Respondent argued that the Petitioner's appraisal was too old an estimate of value to reasonably reflect the values of the subject properties for the tax years at issue.

FINDINGS OF FACT

Based upon the evidence and testimony presented at the hearing, the Tax Commission issues its findings of fact as follows:

1. The tax in question is property tax.
2. The tax years in question are 2001, with a lien date of January 1, 2001, and 2002, with a lien date of January 1, 2002.
3. The fair market values of four separate parcels are under appeal in this matter.

The four parcels are located in CITY, Utah and are identified as parcel numbers #####-1, #####-2, #####-3, and #####-4. All four parcels primarily consist of rental storage units, with one parcel also having a residential property located on it. For the 2001 tax year, the BOE placed a total value of \$\$\$\$\$ on the four parcels. For the 2002 tax year, the BOE placed a total value of \$\$\$\$\$ on the four parcels. The Commission finds that the four parcels contain storage units totaling 262,380 square feet, a figure that both parties agreed with. Using this square footage, the 2001 assessed value of the storage units at \$\$\$\$\$ (total assessed value minus the assessed residential value of \$\$\$\$\$) equates to an assessed value of \$\$\$\$\$ per square foot. Similarly, the 2002 assessed value of the storage units at \$\$\$\$\$ (total assessed value minus the assessed residential value of \$\$\$\$\$) also equates to an assessed value of \$\$\$\$\$ per square foot.

4. The income capitalization approach is the most reliable method of valuing these properties based on the evidence presented. The income capitalization approach does not result in a value that reflects nontaxable “intangible” or business income value.

5. The \$\$\$\$ of potential gross income (“PGI”) used by the Respondent’s appraiser in his income approach to value is the best estimate of the subject properties’ PGI, based on the evidence presented, because it was derived from the actual rents that the Petitioner provided to the Respondent.

6. From the evidence presented, the vacancy rate for the subject properties is approximately %%%%. Such a rate is consistent with the rate used by the Respondent’s appraiser in his income approach to value and is the rate that is computed from the rent roll information included in Appendix III of the Respondent’s appraisal.

7. Based on the evidence and testimony submitted at the hearing, the %%%% capitalization rate used by the Respondent’s appraiser in his income approach is the best estimate of a rate by which the net operating income of the storage units can be capitalized into an estimate of value.

8. The \$\$\$\$ of repairs or deferred maintenance estimated in the affidavits of PETITIONER REPRESENTATIVE 2 and WITNESS 2 does not impact the fair market value of the subject properties to the extent argued by the Petitioner. From the evidence submitted, these repair estimates do not reflect the true cost necessary to make the storage units salable or rentable.

9. The Petitioner purchased parcel #####-4 on April 30, 1997 for \$\$. The date of this sale is over 3½ years prior to the lien date for the 2001 tax year and over 4 ½ years prior to the lien date for the 2002 tax year.

10. The appraisal prepared by APPRAISER and submitted into evidence by the Petitioner has an effective date of January 1, 1996. This effective date is five years prior to the lien date for the 2001 tax year and six years prior to the lien date for the 2002 tax year.

ANALYSIS

Based on the evidence submitted by the parties, the Commission determines that the \$\$\$\$ value estimated by RESPONDENT REPRESENTATIVE 3 in the Respondent's appraisal using the income approach is the best evidence of total value for the four subject properties for both of the tax years at issue.

Petitioner's Valuation Approaches

In determining the fair market value of the subject properties as of January 1, 2001 and January 1, 2002, the age of much of the Petitioner's evidence is too old to be convincing. The Petitioner urged the Commission to consider the APPRAISER appraisal, which estimated a January 1, 1996 value for a portion of the properties currently under appeal. The Respondent testified that the rent rates for storage properties increased significantly during the five and six years between the effective date of the APPRAISER appraisal and the lien dates applicable to this appeal. No evidence was submitted to convince us that the appraisal, even if found to be valid in its reasoning and conclusions for January 1, 1996 purposes, is relevant to the subject properties' values five and six years later. Without such evidence, we place little or no weight on the information and conclusions contained in a document this old.

Similarly, one of the subject properties, parcel #####-4, was purchased by the Petitioner in April 1997. Although this sale is closer to the lien dates at issue than the effective date

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of the APPRAISER appraisal, the sale still occurred over 3½ and 4½ years prior to the respective lien dates of the tax years at issue. Accordingly, without evidence to show that such a sales price would still reflect fair market value after such a significant period, we are reluctant to place much weight on this sale. Certainly, the Respondent's suggestion that a 1994 sale of the COMPANY property is such evidence is not convincing, as it is an even older sale.

Petitioner also presented several cost approach methods to valuation, none of which we find to be persuasive without additional evidence. First, the Petitioner submitted WITNESS 1's affidavit, in which WITNESS 1 stated that he has contracted to build storage units for the Petitioner for prices of approximately \$\$\$\$\$ per square foot. Based on this statement, the Petitioner argued that \$\$\$\$\$ per square foot is the cost new of storage units similar to the ones under appeal in this matter. The Petitioner further argued that, on the basis of substitution, no buyer would pay more for old storage units than he or she would for ones that could be built new. The Commission finds this theory of substitution to be logical, if the evidence submitted at the hearing showed that storage units in the CITY area never sold for more than \$\$\$\$\$ per square foot.

However, the Respondent countered that the prices per square foot contained in the contracts between the Petitioner and WITNESS 1 reflect the "hard" costs to build the storage units themselves and do not reflect additional "soft" costs, including the cost of the land, permits, architectural plans, asphalt, and entrepreneurial profits. We note that RESPONDENT REPRESENTATIVE 3's appraisal contains four comparable sales of storage units, three of which sold within two years of the 2001 lien date. All of these sales, including the one that occurred in CITY, sold for more than \$\$\$\$\$ per square foot of storage space. These comparable sales discredit

the Petitioner's argument that storage units will not sell for more than the contract prices reflected in WITNESS 1's affidavit. Based on the evidence submitted, there appears to be additional value associated with storage units beyond the \$\$\$\$ per square foot cost that WITNESS 1 charges to build these structures.

Another of the Petitioner's arguments concerned "deferred maintenance." The Petitioner submitted two affidavits, one from PETITIONER REPRESENTATIVE 2 and another from WITNESS 2. Based on the estimates of repair costs stated in each of these affidavits, the Petitioner contended that there is \$\$\$\$ of deferred maintenance for the subject properties that should be subtracted from their assessed values in order to arrive at their fair market values. In his affidavit, PETITIONER REPRESENTATIVE 2 estimated a cost of \$\$\$\$ to bring the storage units under appeal up to code by replacing doors, roofs, partitions, and structural components. However, upon questioning, PETITIONER REPRESENTATIVE 2 testified that this cost would be similar to the cost of tearing the current structures down and building them anew. He stated that he based the \$\$\$\$ cost on the amount it had cost to repair old storage units on the subject properties where the roofs had blown off. Furthermore, it appeared from his testimony that the amount quoted in the affidavit reflected more a replacement value than it did a repair value. When asked what the cost would be to bring the properties into a salable or rentable state, PETITIONER REPRESENTATIVE 2 testified that he had not inspected the properties and did not know the amount of the costs needed to bring them to this level.

In his affidavit, WITNESS 2 estimated a cost of \$\$\$\$ to bring the storage units' electrical systems up to current code requirements. However, there is no information provided to

know if the current electrical systems are sufficient for purposes of selling or renting the storage units. From both affidavits and from the Petitioner's own testimony, the Commission believes that the subject properties have a number of units that are relatively old and in need of maintenance. However, the Commission is not convinced that the fair market value of the units is impacted to a significant extent, much less the full extent, of the costs supplied by the two affiants. From the income statements supplied by the Petitioner and used by the Respondent's appraiser in his income approach, it is apparent that the vast majority of the storage units are not only in a rentable state, but are, in fact, rented. Because the subject properties were in a rentable state as of the lien dates at issue and because there is a lack of evidence showing that the costs estimate by the affiants actually reduces the fair market value of the subject properties, the Commission does not find this approach to value convincing in any way.

The Petitioner submitted yet another cost approach to value that he contended is the most accurate reflection of the subject properties' fair market value because it recognizes the fact that tangible property depreciates to zero over time. This approach involves taking the Petitioner's actual acquisition costs associated with the subject properties (purchase and construction costs from 1980 to 1999) and depreciating these costs using the 39-year straight-line depreciation method employed by the Internal Revenue Service for income tax purposes. The Petitioner has included a calculation of the total value of the subject properties using this approach in Exhibit P-7, which shows a total value of \$\$\$\$\$ for the four subject parcels for the 2001 tax year. Although a value for the subject properties for the 2002 tax year is not calculated and included in the exhibit, the

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reasoning behind this approach would indicate that the 2002 tax year value should be even lower than that for the 2001 tax year.

The Petitioner first stated that this approach is similar to the approach by which tangible personal property is assessed for property tax purposes in Utah. As evidence, the Petitioner submitted Exhibit P-8, which included evidence that tangible personal property is indeed assessed as he claimed. For property tax purposes, tangible personal property is usually assessed by taking its actual acquisition cost and depreciating this cost by percentages found on tables developed for that purpose through market studies. The Petitioner contended that the Utah Constitution requires all property to be assessed in an equal and uniform manner, so that the subject properties under appeal must be valued using his proposed valuation method, because tangible personal property is valued by a similar approach. The Commission disagrees. Tangible personal property and real property have significant inherent differences that require different assessment methods to best estimate their respective fair market values. The Petitioner has not convinced the Commission that the Utah Constitution contains restrictions preventing the Commission and other assessing authorities of Utah from employing more than one method of valuation for the numerous types of properties that exist in the state and are subject to taxation.

The Petitioner also argued that a valuation approach using actual acquisition costs minus straight-line depreciation avoided any inclusion of intangible or business value in the resulting fair market value. In Exhibit P-10, the Petitioner included an assertion that the income generated by the storage units should not be used to calculate the parcels' fair market values because such an approach captures business value. He stated that the assessor does not use the income of accountants

and computer service businesses to calculate the fair market value of their properties. The Petitioner is correct, to a point. What the Petitioner neglected to recognize, however, is that the income generated by the storage units is income generated by the assessed property itself, while the income generated by accountants and computer service providers is generated not by the property in which their businesses are located, but by the services they supply their clients. Properties that generate rental income, such as the ones under appeal in this matter, oftentimes sell between investors based on the income that the properties will generate. It is appropriate to use the income approach as one method of valuation to consider when estimating the fair market value of such properties.

The Petitioner has not convinced the Commission that there is a constitutional or statutory requirement to value the subject properties according to his proposed cost approach. Nor has the Petitioner convinced the Commission that a valuation approach that uses the actual historical costs of the subject properties in this manner results in a value that reflects the price at which the properties would sell as of the lien dates at issue. Accordingly, the Commission gives little or no consideration to this method of valuation either.

Respondent's Appraisal

From the evidence and testimony presented at the Formal Hearing, the Commission determines that \$\$\$\$\$, as estimated by RESPONDENT REPRESENTATIVE 3 in the Respondent's appraisal using the income approach, is the best estimate of total value for the subject properties for the two tax years at issue. Although the Commission would have preferred to see a cost approach included in an appraisal and does not agree with RESPONDENT

REPRESENTATIVE 3's reasoning for omitting it, we do not find its exclusion to negate the value of the information contained in the appraiser's other two methods of valuation.

In Exhibit P-10, the Petitioner included a statement asserting that the Respondent's appraiser did not properly apply the definition of "fair market value" that is quoted in the appraisal when he appraised the subject properties. The Petitioner correctly stated that on page 9 of the Respondent's appraisal, RESPONDENT REPRESENTATIVE 3 has included a statutory definition for "fair market value" that includes language about an "adjustment for intangible values under Sections 59-2-304 and 59-2-201." The Petitioner stated that, because the appraiser did not calculate and deduct a value for the intangible value of the subject properties in his appraisal, the appraisal is flawed and should be rejected as evidence of the subject properties' fair market values.

We reject the Petitioner's argument for two reasons. First, for the tax years at issue, the definition of "fair market value," as provided in UCA §59-2-102(12) for purposes of property taxation, no longer contained the language referring to an "adjustment for intangible values under Sections 59-2-304 and 59-2-201." In 1998, the Legislature removed this language from the statutory definition of "fair market value." But, even though the appraiser misquotes this definition in his appraisal, the Petitioner's argument that the appraiser violated the "old" statute by not including an intangible value adjustment becomes, ironically, an argument that the appraiser properly applied the "new" statute that was in effect for the tax years at issue by excluding such an adjustment. Second, we reject the Petitioner's argument because he did not show that the subject properties contain the type of intangible value that is or was ever required to be deducted under Utah law.

Sales Comparison Approach. In his sales comparison approach, the appraiser has used four comparable sales, which sold at prices per square foot of storage area ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. Thus, each of the comparables sold for a higher price per square foot than the subject properties' assessment at \$\$\$\$\$ per square foot. Even when the appraiser adjusted the comparable sales to estimate the value of the subject properties, the adjusted prices per square foot for the four comparables ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. These comparables suggest that the subject properties may actually be underassessed at \$\$\$\$\$ per square foot.

However, because the appraiser gave very little weight to the sales comparison approach to value in his final correlation of value, we only note that the comparables and the appraiser's adjustments relating to them appear to support both his final estimate of total value for the subject properties and the BOE's total assessed values for both tax years. Although the Petitioner stated that the appraiser should have used the 1997 sale of the one of the subject properties and the 1994 sale of another CITY property as comparables, we have already commented that these sales are too old to provide a convincing basis on which to value the subject properties for the tax years at issue. Nor do we place much weight on the Petitioner's criticism that comparables from cities other than CITY were used, because this approach received little weight in the appraiser's final reconciliation of value and because the appraiser made adjustments to all comparables.

Income Capitalization Approach. With respect to the income approach, we find, from the evidence submitted, that this approach best reflects the fair market value of the subject properties for the tax years at issue.

Potential Gross Income. The appraiser used a PGI of \$\$\$\$\$ in his income approach. He stated that this figure was based on an average of the rent rolls supplied by the Petitioner for 2000 and 2001, which showed a 2000 PGI of \$\$\$\$\$ and a 2001 PGI of \$\$\$\$\$ for the storage units under appeal. The Petitioner claimed that the rent rolls he supplied included more units on properties other than the ones under appeal. The appraiser agreed with the Petitioner's statement and declared that, before developing these PGI amounts, he removed from the rent roll the rents associated with units located on parcels not under appeal. At the hearing, the Petitioner and the appraiser agreed as to the unit numbers that comprise the four appealed properties (the appraiser has attached a list of these unit numbers and their associated rents in Appendix III of his appraisal). For this reason and because the Petitioner did not present any evidence that the PGI used by the appraiser contained rents other than those associated with the four properties under appeal, the Commission finds that the PGI of \$\$\$\$\$ is reasonable to use in this income approach, based on the information available at the hearing.

Vacancy Rate. The Respondent's appraiser used a %%%% vacancy rate in his income approach. The Petitioner objected, stating that historical vacancy has been %%%%. However, Appendix III of the appraisal contains a list of the 2000 and 2001 actual rents per month that were received for units in the parcels under appeal, with a zero place beside units that were not rented. At the hearing, the Petitioner stated that the unit numbers included on this list were the ones that pertained to the four appealed parcels. If this is true, the Appendix III lists should offer some indication of vacancy. When the number of units that show a zero rental amount is compared to the total number of units on the lists, we see that approximately %%%% of the total units have a zero

rental amount in each of the years for which a list was prepared. In addition, when the amount of income lost for each of these “zero” units is estimated, the loss appears to be approximately %%% of the PGI amount used by the appraiser. For these reasons and based on the evidence and testimony provided at the hearing, we find that the vacancy rate of %%% for the two tax years at issue appears reasonable.

Capitalization Rate. The Petitioner also argued that the capitalization rate used by the appraiser in his income approach was too low because it used an average of very small, incomparable sales. However, we note that the capitalization rate the appraiser used to value the subject properties was at the higher range of the capitalization rates derived for the four comparables sales. In addition, the Petitioner provided no evidence of capitalization rates derived from comparable sales occurring near the respective lien dates at issue. Accordingly, there is no convincing evidence of other capitalization rates that could be use as a substitute. From the information provided at the hearing, we find that the capitalization rate used by the Respondent’s appraiser appears reasonable.

The appraiser’s \$\$\$\$ estimate of total value for the subject properties using the income approach appears to be reasonable, based on the information available. Because no other approach used by either party is as persuasive to the Commission as this approach, we find that it is the best evidence of the subject properties’ total value for the tax years at issue.

CONCLUSIONS OF LAW

Although the Petitioner has convinced the Commission that a number of its storage units are older and in need of various repairs, he has not persuaded us that the county’s values for the

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four subject parcels, as established by the BOE, contain error for either of the tax years at issue. Nor has the Petitioner provided the Commission with a sound evidentiary basis for reducing the original valuations.

The Respondent, on the other hand, has submitted evidence that the total fair market value of the subject properties may be slightly higher than that set by the BOE. We have found that the best evidence of value submitted at the hearing shows the total value of the four parcels to be \$\$\$\$\$. The total value set by the BOE was \$\$\$\$\$ for 2001 and \$\$\$\$\$ for 2002. Once the value of small residential property is subtracted from the total BOE value for each year, the total value of the storage units alone is approximately \$\$\$\$\$ for each of the tax years. Because the assessor specifically requested that the Commission sustain the BOE values instead of raising them to a total of \$\$\$\$\$ and because all of these total values are relatively close to one another, we believe that the respective BOE total values may be reasonably deemed the fair market values of the subject properties for each of the tax years at issue.

In addition, the Commission acknowledges that, although not completely persuasive, the Petitioner's testimony regarding the condition of some of the units may indicate a negative impact on value. Accordingly, the Commission finds that the total of the BOE values established by the county for each of the tax years at issue allows for the possibility of some deferred maintenance and repairs that may not have been recognized in the income approach found in the Respondent's appraisal. For these reasons, we sustain the values established by the BOE on all four parcels under appeal for each of the tax years at issue.

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We note that the BOE values of some individual parcels appear to vary somewhat between the two years under appeal. However, most, if not all, of the evidence and testimony presented at the hearing concerned the parcels as a unit. As a consequence, our decision addressed the parcels as a unit and did not attempt to address the values of the individual parcels. For this reason, we do not recommend a change to the BOE values for any parcel under appeal for either of the tax years at issue.

DECISION AND ORDER

Based on the foregoing, the Commission orders that the values set by the BOE on all four parcels for both the 2001 and 2002 tax years be sustained. We do not find sufficient cause to change the value of any parcel under appeal in this matter.

DATED this _____ day of _____, 2004.

Kerry Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2004.

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Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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