

04-0146,47  
Locally Assessed Property  
Signed 02/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
	)	
Petitioner,	)	Appeal No.    04-0146 & 04-0147
	)	
v.	)	Parcel Nos.    #####-1
	)	#####-2
BOARD OF EQUALIZATION	)	Tax Type:    Property Tax/Locally Assessed
OF SALT LAKE COUNTY,	)	Tax Year:    2003
STATE OF UTAH,	)	
	)	Judge:        Chapman
Respondent.	)	

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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 REPRESENTATIVE (by telephone)

For Respondent:    RESPONDENT REPRESENTATIVE, 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 August 3, 2004.

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At issue is the fair market value of two adjacent parcels as of the lien date, January 1, 2003. Both properties are located on STREET 1 between STREET 2 and STREET 3. The Petitioner owns both parcels, both of which are improved with an office/warehouse that is essentially identical in size, age, and income-generating potential. In fact, the County has assessed each property separately, but using an identical income approach. For these reasons and because the evidence proffered at the Initial Hearing pertains to both properties, the Commission will address the proffered evidence for and issue a decision on the values of both properties in this Order.

At issue in Appeal No. 04-0146 is the value of Parcel No. #####-1 (“Parcel One”). This parcel consists of 1.59 acres of land and an office/warehouse that was built in 1989. The County shows the building to be 38,152 square feet in total size (7,600 square feet of which is mezzanine/storage space above the office area). The County has used an income approach to assess the value of the property, as follows:

Rentable square footage	38,000
x NNN Rent Rate	x \$\$\$\$\$
PGI	\$\$\$\$\$
- 8% Vacancy	- 12,160
EGI	\$\$\$\$\$
- 5% Expenses	- 6,992
NOI	\$\$\$\$\$
÷ Cap. Rate	÷ %%%%
Value	\$\$\$\$\$

At issue in Appeal No. 04-0147 is the value of Parcel No. #####-2 (“Parcel Two”). Parcel Two consists of 1.43 acres of land and an office/warehouse that is identical in size to the one on Parcel One. It was built in 1988. To assess Parcel Two, the County used the same income

approach that it developed for Parcel One. Both parcels were assessed at \$\$\$\$\$, a value sustained by the County BOE. This value equates to approximately \$\$\$\$\$ per square foot of rentable space.

The Petitioner contends that many of the elements in the County's income approach are incorrect. The owner of the parcels signed and submitted a combined rent roll for both properties as of March 2003, which lists the tenant, the square footage rented, and the lease payment, as follows:

1. TENANT 1	36,000 sq. ft.	\$\$\$\$\$ (\$\$\$\$\$ per sq. ft.)
2. TENANT 2	18,000 sq. ft.	\$\$\$\$\$ (\$\$\$\$\$ per sq. ft.)
3. TENANT 3	9,000 sq. ft.	\$\$\$\$\$ (\$\$\$\$\$ per sq. ft.)
4. Vacant for 2 years	<u>9,000 sq. ft.</u>	
Total	72,000 sq. ft.	(36,000 sq. ft. per building)

Rentable square footage. The County states that the actual square footage of each building is 38,152 square feet. The County has assessed each of the buildings at 38,000 of rentable square footage, while the property owner has submitted a document declaring that it leases each of the buildings at 36,000 of rentable square footage. The County could not explain how it determined the rentable square footage to be more than 99% of actual square footage and could not refute the actual rentable square footage that the owner provided on his rent roll. Accordingly, on the information provide at the hearing, the Commission will use 36,000 square feet as the rentable square footage of each building.<sup>1</sup>

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<sup>1</sup> Petitioner's representative stated that the owner told her that the two properties only contained 66,533 square feet of rentable space (because a portion of the mezzanine space was not leasable). However, the rent roll document signed by the owner shows otherwise.

Rental Rate. The County claims that the subject is an “industrial/flex” building that should receive higher rents than an “office/warehouse” and that the rent appropriate for the subject is \$\$\$\$ per square foot on a NNN lease. To support its \$\$\$\$ lease rate, the County provided information of the lease rates of three industrial/flex buildings located from eight to 17 blocks away from the subject parcels. The comparables rented from \$\$\$\$ to \$\$\$\$ per square foot NNN.

The County stated that the actual leases on the property were too old to use, even though one of the leases was a month-to-month lease at \$\$\$\$ per square foot. The Petitioner, on the other hand, presented a number of comparable leases that were located much closer to the subject (some as near as two blocks) and that leased for \$\$\$\$ and less per square foot NNN. The Petitioner developed its income approach to value using a \$\$\$\$ rental rate.

Neither party has proffered evidence to show whether the subject buildings are “industrial/flex” buildings or “office/warehouse” buildings or that the rental rates are different for these different classifications. However, the one lease on the subject buildings that was a month-to-month lease as of the lien date was \$\$\$\$ per square foot. The actual month-to-month lease rate in existence as of the lease date and the comparables lease rates presented by the Petitioner (especially those closer in location than the County comps) call into question the rental rate used by the County. In addition, the County records include notes that suggest that the mezzanine square footage has either not been rented in the past or has a negative impact on rental rates. Based on the evidence submitted, a lease rate of \$\$\$\$ per square foot on a NNN lease appears more reasonable than the County’s \$\$\$\$ NNN lease estimates. For these reasons and based on the information presented at

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the Initial Hearing, the Commission will use a \$\$\$\$ per square foot NNN lease rental rate to develop an income approach to value.

Vacancy. Both parties use an 8% vacancy rate in their income approaches, which the Commission will also use. Although it appears that one of the buildings had a long-term vacancy rate of 25% as of the lien date, a non-capitalized deduction for temporary rent lease may be appropriate. On the other hand, the other building seems to have experienced a long-term vacancy rate of 0%. Because neither party addressed this issue of short-term losses, neither will the Commission.

Expenses. The County deducted expenses equal to 5% of EGI, which it explained to be 2% of actual expenses and 3% for reserves. The Petitioner used a 6% expense rate plus a 3% deduction for reserves. For parties used a 3% reserves deduction, so the Commission will as well. For the actual expenses, the County used 2% and the Petitioner 6%. Neither party proffered evidence to support its percentage estimate. However, the property owner proffered testimony indicating that actual yearly expenses tend to support the higher figure. Based on the information provided at the hearing, the Commission will use 6% rate for actual expenses.

Capitalization Rate. The County used a %%% rate and did not add the property tax rate to the %%% rate because it developed its income approach using a NNN lease. The Petitioner used a capitalization rate of %%% based on comparable cap rates it submitted and loaded the %%% rate with a property tax rate of %%%, for a total rate of %%%. A review of the Petitioner's cap rate comparables supports the %%% rate used by the County.

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Because the Commission previously found that a \$\$\$\$ lease rate on a NNN lease appeared reasonable, it would be inappropriate, under these circumstances, to add a property tax rate to the capitalization rate. Accordingly, the Commission will use a %%% capitalization rate in its income approach.

Income Approach Based on Information Provided. As explained above, the parties, particularly the County, chose to provide limited information at the Initial Hearing. Based on the information provided at the Initial Hearing, the Commission finds that the following is a reasonable income approach to value for each parcel at issue.

Rentable square footage	36,000
x NNN Rent Rate	x \$\$\$\$
PGI	\$\$\$\$
- 8% Vacancy	- 8,640
EGI	\$\$\$\$
- 6% Expenses	- 5,962
- 3% Reserves	- 2,981
NOI	\$\$\$\$
÷ Cap. Rate	÷ %%%
Value	\$\$\$\$

At a value of \$\$\$\$\$, each parcel would have a value of \$\$\$\$\$ per square foot (based on a rentable square footage of 36,000), which would fall within the range of sales developed from the comparable sales provided by the Petitioner. The County provided no comparable sales to support its assessment, which equated to approximately \$\$\$\$\$ per square foot of rentable space. For these reason, the Commission recommends a value of \$\$\$\$\$ for each of the parcels at issue.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property

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taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, 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), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

#### DISCUSSION

The Petitioner submitted information that called into question the value assessed by the County. Based on the evidence and testimony proffered by both parties at the Initial Hearing, an income approach to value would show each subject property to have a value of \$\$\$\$\$ instead of the \$\$\$\$\$ at which each was assessed.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that, for the 2003 tax year, the assessed value of Parcel No. #####-1 should be reduced from \$\$\$\$\$ to \$\$\$\$\$ and the assessed value of Parcel No. #####-2 should also be reduced from \$\$\$\$\$ to \$\$\$\$\$. 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. 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 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 \_\_\_\_\_, 2005.

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Kerry R. Chapman  
Administrative Law Judge



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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 \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

*KRC/04-0146.int & 04-0147.int*