

04-0148 & 05-1011  
Locally Assessed Property Tax  
Signed 06/01/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
	)	
Petitioner,	)	
	)	Appeal Nos.    04-0148, 05-1011
v.	)	
	)	Tax Type:        Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Parcel No:    #####
SALT LAKE COUNTY,	)	
STATE OF UTAH,	)	Tax Years:    2003 & 2004
	)	Judge:        Phan
Respondent.	)	

**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 order, specifying the commercial information that the taxpayer wants protected.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Appeals Manager  
RESPONDENT REPRESENTATIVE 2, Certified General Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 5, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien dates January 1, 2003 and January 1, 2004.
2. The subject property is parcel no. #####. The property is located at ADDRESS, Salt Lake County, Utah. The property is 1.07 acres and is improved with a two-tenant office/warehouse building. There

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was a dispute between the parties as to the total rentable square foot of the building. One party had measured the building in 1999 and concluded that the total square foot was 10,590. However, Petitioner indicated that there was only 9,262 rental square feet which she had determined by adding up the square feet listed on the leases for the property and of this 60% was office space. Respondent argued that all parts of the building were being used by the tenants and the actual rentable square feet was 10,182, with approximately 48% office space. From the photographs presented it appears that each tenant to the subject property would have its own entrance, so there would be no reason for shared hallways or other common areas. Without receiving sketches and diagrams on the actual square foot and lay out of the building and not having information to account for the large difference between actual and Petitioner's rentable square foot and noting the burden of proof the Commission calculates its value based on 10,182 square feet.

3. For the tax year 2003 the County Assessor had value the property at \$\$\$\$ and the Board of Equalization sustained the value. For tax year 2004 the County Assessor had set the value at \$\$\$\$ and the County Board of Equalization reduced the value to \$\$\$\$\$. An Initial Hearing had been held in Appeal No. 04-0148 and Initial Hearing Order issued. For Appeal No. 05-1011 the parties had waived the Initial and the matter proceeded directly to the Formal Hearing for that year.

4. Petitioner's representative submitted some value information that she had compiled. She acknowledged that she was not an appraiser and states that she had received no compensation for preparing the information submitted in this matter. She prepared both an income analysis from which she concluded the value of the subject was \$\$\$\$\$. Additionally she considered sales comparables from which she concluded the value of the subject was \$\$\$\$\$. Because PETITIONER REPRESENTATIVE is not an appraiser the Commission does not give her appraisal like conclusions and adjustments the deference given to a licensed appraiser. However, the Commission does consider the underlying comparables and other supporting

information that she has presented.

5. In her income approach PETITIONER REPRESENTATIVE considered nine lease comparables. The lease rates ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot. From these she concluded that the subject property would lease for \$\$\$\$ per square foot. The first three comparables were located on the same street within a few blocks from the subject. The first two lease comparables were located in what appeared to be the same, fairly new (1995), building that was a good comparable. The subject building did appear to have larger windows generally and more windows around the main entrances. While these 2 comparables had somewhat higher ceilings. These two comparables had leased for \$\$\$\$ per square foot for a 5000 square foot space and \$\$\$\$ per square foot for a 10,500 square foot space. As the subject is a two tenant building the first lease is fairly similar as to size and also similar in that there was a large percent of office space. Her comparable number 3, also on the same street was from a somewhat older building with a 10,000 square foot space and only 25% office that had leased for \$\$\$\$ per square foot. After looking at all the comparables that she presented, the quality of the subject building and the photographs of the subject and comparables submitted in this matter the Commission disagrees with her lease rate conclusion and determines that the lease rate would be more to the top end of the range. In calculating her value PETITIONER REPRESENTATIVE applied a 10% vacancy rate, 6% for expenses, 3% for reserves and a %%%% capitalization rate.

6. PETITIONER REPRESENTATIVE also submitted six sales as comparables in this matter. Respondent submitted photographs and pointed out that the sales were dissimilar to the subject in quality, style and size. The one sale which did appear reasonably similar as far as quality and according to Respondent's information was fairly close as far as size was PETITIONER REPRESENTATIVE'S comparable 6. However, this sale occurred in November 2000. Respondent argued that it has sold again in February 2002 and that

PETITIONER REPRESENTATIVE had an incorrect amount for the square foot.

7. Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE 2, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE 2 conclusion that the value of the subject property for the lien date January 1, 2003, was \$\$\$\$\$. He considered a cost, income and sales approach in his appraisal. In his income appraisal he considered four lease comparables. These properties rented for a price per square foot from \$\$\$\$\$ to \$\$\$\$\$. As the subject was a two tenant building the rentable square foot of the lease comparables was relatively similar in size to the subject units. Petitioner's representative argued that the comparables were mostly newer, in better condition and with taller ceiling heights. She provided the County Commercial Records to support this contention. She also pointed out that they were not in the same industrial park or area as the subject property. RESPONDENT REPRESENTATIVE 2 did conclude a lease rate for the subject at the lower end of the range indicated by his comparables, at \$\$\$\$\$ per square foot. As noted above the Commission found that the income comparables provided by Petitioner supported a value around \$\$\$\$\$ per square foot.

8. In his appraisal RESPONDENT REPRESENTATIVE 2 had originally discussed a vacancy rate of 10%, the same as PETITIONER REPRESENTATIVE, but then applied a rate of 5%, which he then revised up at the hearing to 8%. At the hearing he indicated that it should have been 8% based on a study. However, he did not submit the study or have it with him. Considering the weight of evidence, which included a study submitted by Petitioner and the fact that the appraisal discussed a rate 10% as being appropriate the Commission would stay with the 10% vacancy rate. In his appraisal RESPONDENT REPRESENTATIVE 2 also used a %%% capitalization rate. This was the same as the rate applied by Petitioner. Another difference between RESPONDENT REPRESENTATIVE 2 and PETITIONER REPRESENTATIVE'S income approach was the expenses. RESPONDENT REPRESENTATIVE 2 allowed only a total of 6% for

expenses and reserves, arguing that he was using triple net leases where the tenant paid the expenses and 6% was sufficient to cover management and reserves. PETITIONER REPRESENTATIVE in her calculation used 6% for expenses with an additional 3% for reserves.

9. PETITIONER REPRESENTATIVE argued that RESPONDENT REPRESENTATIVE 2 rent comparables were not in the same industrial park as the subject property, and that they tended to be in better condition and have higher ceilings.

10. In his appraisal RESPONDENT REPRESENTATIVE 2 considered six comparable sales. They ranged in sale price from \$\$\$\$\$ to \$\$\$\$\$ per square foot. His sales bracketed the subject property, rating two properties as superior and two as inferior. Form the sales he concluded that the subject would sell for \$\$\$\$\$ per square foot, which indicates a value of \$\$\$\$\$. In looking at these comparables they were reasonably similar in physical characteristics but were distant in location from the subject property.

11. After weighing the evidence in this matter, the Commission concludes the weight of the evidence supports a new value for the subject property. The Commission feels the income approach in this matter has the best support from the comparables. However, it concludes that the lease rate used by RESPONDENT REPRESENTATIVE 2 was a too high and he did not use a high enough vacancy rate. Using the lease rate of \$\$\$\$\$ per square foot and a 10% vacancy it is the Commission's conclusion that the value for this property for both years at issue is \$\$\$\$\$.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a

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residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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. (Utah Code Ann. 59-2-102(12).)

3. (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. . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

#### CONCLUSIONS OF LAW

To prevail in a real property tax dispute, 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*

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*Lake County*, 943 P.2d 1354 (Utah 1997). In this matter Petitioner has not sufficiently established a lower value for the subject property, however, Respondent also has not supported the value that it requested at the hearing.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2003 is \$\$\$\$ and for January 1, 2004 is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Jane Phan  
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 \_\_\_\_\_, 2006.

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 Sec. 63-46b-13. A Request

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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. Sec. 59-1-601 and 63-46b-13 et. seq.

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