

04-0319
Locally Assessed Property Tax
Signed 04/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0319
	)	Parcel No.	#####
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION)		
OF SALT LAKE COUNTY,	)	Tax Year:	2003
STATE OF UTAH,)		
	)	Judge:	Davis
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 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:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
PETITIONER REPRESENTATIVE 2

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 December 13, 2004.

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The issue in this proceeding is the fair market value of the subject property as of January 1, 2003.

The Salt Lake County Assessor originally valued the subject property at \$\$\$\$\$. Upon appeal to the Salt Lake County Board of Equalization, a value of \$\$\$\$\$ was determined.

The subject property is a metal building on a backage piece of property located at ADDRESS in Salt Lake County, Utah. The metal building contains 8,400 square feet, and is rented primarily to (X) and other industrial or commercial type businesses. The property contains a total of 13 units ranging in size from 350 square feet to 1,950 square feet. However, the rent roll indicates that three of the units have been remodeled into residential units, although only two of those three residential units were occupied as residential units on the lien date. Petitioner represented that as of the lien date, six out of 13 units were vacant, which comprised a total of 5,050 square feet vacant out of the total available 8,400 square feet. Petitioner also represented that the vacancy rate for the property has been 50% or more for the past three (3) years.

The property is zoned M-1 as a manufacturing or industrial property.

Petitioner presented an actual income statement on the property for the year 2002. Petitioner represented that the actual income was \$\$\$\$\$, but that the total expenses on the property were \$\$\$\$\$, leaving a net loss for the property of \$\$\$\$\$ for calendar year 2002. However, the expenses included property tax of \$\$\$\$\$, bank charges of \$\$\$\$\$, depreciation of \$\$\$\$\$, and interest charges of \$\$\$\$\$. Those expenses would likely not be included in calculating the value.

Petitioner also presented a real estate purchase contract indicating that the property was purchased on June 1 of 2002 for \$\$\$\$\$. However, Petitioner acknowledged that PETITIONER REPRESENTATIVE 2 has a financial interest in both the buyer and seller, and is also the registered agent of both the buyer and the seller for that transaction. Therefore the transaction may not be an arms-length transaction, and the purchase price may not necessarily be indicative of the fair market value of the property.

Petitioner also presented a separate income approach on the property using a market rent of \$\$\$\$\$ per year to indicate a market income of \$\$\$\$\$. Petitioner then deducted 8% for vacancy and collection loss, expenses of 7%, and a reserve for replacements of 3%. This produced a net income of \$\$\$\$\$ which Petitioner capitalized at %%% to arrive at an indicated value of \$\$\$\$\$. Petitioner rounded that amount to \$\$\$\$\$. Petitioner supported the proposed market rents by presenting three separate comparable leases which rented for annual rates of \$\$\$\$\$ per square foot, \$\$\$\$\$ per square foot, and \$\$\$\$\$ per square foot. Petitioner utilized the highest of those comparable rents.

Petitioner also presented six separate comparable sales which sold for prices between \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot. Petitioner also represented that if the property sold for \$\$\$\$\$ per square foot, it would equal a value of \$\$\$\$\$.

Respondent submitted a direct capitalization approach which was revised from the Board of Equalization hearing. That document stated as follows:

"Appellant's agent submitted a rent roll from January 1, 2003 indicating 5,050 square feet vacant as of January 1st. The weighted average of the reported

rents was \$\$\$\$\$/sf. It is assumed that this is still a modified gross rent with the tenant paying utilities. The new calculations are at right. Deduct rent loss on 4,210 sf vacant above stabilized. Two year rent loss assuming straight line absorption equals \$\$\$\$\$. Commissions on five year leases totals \$\$\$\$\$. Tenant improvement allowances of \$\$\$\$\$/sf totaling \$\$\$\$\$. There would be no excess expenses."

Based upon the above analysis, Respondent determined a value of \$\$\$\$\$, which is almost exactly the amount determined by the Board of Equalization.

In addition to the issue regarding the valuation of the property, Petitioner raised an issue as to whether the residential units in the property would qualify for the residential exemption. Petitioner's representative did testify that there were two individuals who lived in the building full time as their only place of residence, and there was one more vacant unit configured as a residential unit.

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. 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).

5. Utah Admin. Code Rule R884-24P-52.F.5 provides as follows:

"5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence."

6. Rule R861-1A-9.C.3 provides as follows:

"3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board."

DISCUSSION

Petitioner supported its requested value by both an income approach and a comparable sales approach. In its income approach, Petitioner used a rent rate of \$\$\$\$ per square foot with a vacancy rate of 8%. The \$\$\$\$ rent rate was supported by three (3) comparable leases which showed comparable rent rates of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot per year. Petitioner based its proposed value on the highest comparable rent rate of \$\$\$\$ per square foot per year. In its comparable sales approach, Petitioner relied upon six (6) comparable sales which sold for prices

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between \$\$\$\$\$ and \$\$\$\$\$ per square foot. Petitioner relied most upon the highest of those comparable sales, and used an estimated value of \$\$\$\$\$ per square foot.

Respondent supported its requested value by only an income approach, in which it used a rent rate of \$\$\$\$\$ per square foot per year, with a vacancy and collection loss of 10%. Respondent did not support its proposed rent rate of \$\$\$\$\$ by any comparable rent rates. Its only support for that rate was that it was the "weighted average of the reported rents." While it is true that the occupied units rent for the price stated by Respondent, it is primarily the smaller units that are occupied. The two (2) larger than average units that are occupied rent for less than \$\$\$\$\$ per square foot per year. Two of the vacant units are significantly larger than most of those that are occupied. The evidence indicates that the larger units rent for less per square foot than do the smaller units. Therefore, it appears likely that the larger units would rent for less than \$\$\$\$\$ per square foot per year. However, it would be speculative to attempt to estimate the impact of such size differences on the rents to be received, especially where Respondent did not provide any comparable rents from any comparable properties.

Although the income approach presented by Respondent is based upon assumptions that would normally not appear to be excessive, those assumptions do appear to create an unrealistic result. The two (2) assumptions that appear to be questionable are that the property would all rent for an average of \$\$\$\$\$ per square foot per year, and that the vacancy rate would be only 10%. Respondent's estimate of value attempted to adjust for the excessive vacancy rate by assuming a two

(2) year absorption period, but on a property which has had more than a 50% vacancy rate for three (3) years, that is likely not adequate.

Respondent's estimate of future rents is that the property will produce an annual income of \$\$\$\$\$ (minus the rent loss for excessive vacancy). However, the rents for the prior year totaled only \$\$\$\$\$. Even if all of the existing tenants remain and pay all of their rents for the full year, the rents for the year would only be \$\$\$\$\$. Also, even if all of the vacant units are rented, because two (2) of the units are significantly larger than all of the units that are rented and another two (2) units are double the size of most of the units that are rented, it is very doubtful that they will earn the rents estimated by Respondent. The amount of such different income is speculative, because there is no testimony or evidence on which a finding may be made.

Accordingly, the Commission finds that Respondent's estimate of potential gross income, even after giving a rent loss deduction for excessive vacancy, is exaggerated, and the vacancy and collection loss adjustment is inadequate. Therefore, the Commission finds that Respondent's estimate of the fair market value is not a reliable estimate of the fair market value of the subject property.

The Commission finds that Petitioner has met its burden of proof to show that there was error in the value determined by Respondent, and has provided the Commission with a sound evidentiary basis for reducing the value to the amount proposed by Petitioner. The evidence shows that the subject property was purchased shortly before the lien date for \$\$\$\$\$ in a non-arms-length transaction. The Petitioner's income approach estimated a value of \$\$\$\$\$, and Petitioner's

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comparable sales approach indicated a value of \$\$\$\$\$. The Commission determines that the value of \$\$\$\$\$ is best supported by the evidence.

There also was a question regarding whether the rooms that are utilized as residential units are qualified for the primary residential exemption permitted by Utah Code Ann. §59-2-103. There was very little evidence presented on this issue, and there was no evidence presented on whether this issue was presented to the Board of Equalization, or whether the Board of Equalization made any decision on this issue. Also, the document filed by Petitioner with the county to appeal this matter to the Utah State Tax Commission does not mention the primary residential exemption. Therefore, there is a question regarding whether that issue is properly before the Tax Commission, i.e., there is a question regarding whether the Tax Commission has jurisdiction to decide that issue in this appeal. Utah Administrative Code, Rule R861-1A-9.C.3 states:

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

Therefore, if the issue was not presented to the county board, the Tax Commission will not decide the issue on appeal.

Rule R884-24P-52.F.5 provides that when a property has multiple uses, one of which is residential, the property "shall receive the residential exemption only for the percentage of the property that is used as a primary resident." Therefore, it does appear that a portion of the property may well qualify for the primary residential exemption. However, the Commission cannot issue an order relating to the primary residential exemption because there was no evidence presented

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regarding whether that issue was presented to the Salt Lake County Board of Equalization or whether Petitioner complied with the administrative requirements to obtain the exemption.

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 \$\$\$\$\$. Because of insufficient evidence as to whether the issue of the primary residential exemption was presented to the Salt Lake County Board of Equalization, or whether Petitioner ever properly requested the primary residential exemption, the Commission does not rule on whether a portion of the subject property qualifies for the primary residential exemption provided for in Utah Code Ann. §59-2-103. The Salt Lake County Auditor is hereby 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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G. Blaine Davis
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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