

04-0324
Locally Assessed Property Tax
Signed 07/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND FINAL DECISION
Petitioner,)
) Appeal No. 04-0324
v.)
) Parcel No #####
BOARD OF EQUALIZATION OF) Tax Type: Property Tax/Locally Assessed
SALT LAKE COUNTY,) Tax Year: 2003
STATE OF UTAH,)
) Judge: Chapman
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. 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, Representative
 For Respondent: RESPONDENT REPRESENTATIVE, Salt Lake County Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 23, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes.

2. The lien date at issue is January 1, 2003.

3. The subject property is parcel number ##### and is located at ADDRESS 1 in CITY, Utah.

4. The subject property is 1.00 acre of land improved with a one-story, 7,268 square foot brick office building that built in 1977. The building is owner-occupied. RESPONDENT REPRESENTATIVE, the County's representative and a certified general appraiser, states that the building is a Class "C" structure, a fact that the Petitioner did not contest.

5. The parties disagree on whether or not the subject's building is entirely finished as office space. The County contends that 100% of the subject building is finished as office space, while PETITIONER REPRESENTATIVE, the Petitioner's representative, contends that only 75% of the space is finished and used as office space. PETITIONER REPRESENTATIVE contends that the remaining 25% of the building has concrete floors, instead of carpeting or other office-type floor covering, and is used as storage, not office, space. RESPONDENT REPRESENTATIVE states that she visited the subject property, but does not remember any space that had concrete floors. PETITIONER REPRESENTATIVE submits pictures showing areas with concrete floors and shelving and contends they are pictures of the subject building. Upon receiving the Petitioner's pictures, the County chose not to rebut their authenticity with another visit to the property or pictures of its own. On this issue, the Commission finds, based on a preponderance of the evidence

submitted by the parties, that 75% of the subject building is completely finished as office space and 25% of the building is only partially finished as office space and is used as storage space.

6. The Salt Lake County's Assessor's Office originally assessed the subject property as of the lien date at issue at \$\$\$\$\$, or \$\$\$\$\$ per square foot. The County Board of Equalization reduced the value to \$\$\$\$\$, or \$\$\$\$\$ per square foot, based on the Assessor's Office recommendation of an income approach derived from a \$\$\$\$\$ per square foot lease rate (triple net lease), a 10% vacancy rate, a 3% operating expense rate, a 3% reserves expense rate, and a %%% capitalization rate.

7. For the Petitioner, PETITIONER REPRESENTATIVE submitted valuation information in this matter. She is not a licensed appraiser. She prepared both an income approach to value and a market sales approach. In her sales approach, she submitted three comparables that sold at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. She adjusted these comparables to prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot and estimated a value of \$\$\$\$\$ per square foot for the subject, which equates to \$\$\$\$\$. For her income approach, PETITIONER REPRESENTATIVE relied on an estimated rent of \$\$\$\$\$ per square foot, a 10% vacancy rate, a 6% operating expense rate, a 3% reserves expense rate, and a %%% capitalization rate, with which she derived an estimated value of \$\$\$\$\$ for the subject.

8. The County submitted an appraisal prepared by RESPONDENT REPRESENTATIVE, in which she concluded that the value of the subject property was \$\$\$\$\$, or \$\$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE arrived at this value by reconciling at

equal weights her income approach to value, which showed a value of \$\$\$\$\$, and her sales comparison approach, which showed a value of \$\$\$\$\$. In reconciling her final estimate of value for the subject, RESPONDENT REPRESENTATIVE did not use the cost approach value she had derived.

9. In the sales comparison approach for the Petitioner, PETITIONER REPRESENTATIVE adjusted the prices at which her three comparables sold to \$\$\$\$\$ to \$\$\$\$\$ per square foot. The Commission does not believe that PETITIONER REPRESENTATIVE gave due consideration to the fact that the subject land to building ratio is approximately double the ratio shown for the comparables. In addition, the Commission is not convinced that her adjustments for “grade” are appropriate. As PETITIONER REPRESENTATIVE is not an appraiser, the Commission does not give her adjusted values the weight they would give an appraisal.

10. In her sales approach for the County, RESPONDENT REPRESENTATIVE considered four comparables sales. Three of the comparables were either on STREET 1 or STREET 2 and sold for “leased fee” prices of \$\$\$\$\$ to \$\$\$\$\$ per square foot. These comparables contained 100% office space. Her remaining comparable sale, located at ADDRESS 2, is nearer to the subject and sold for a “fee simple” price of \$\$\$\$\$ per square foot. The Commission is not convinced that the comparables on STREET 1 and STREET 2 are similar to the subject based on the evidence submitted, and no information was available to determine if their “leased fee” sales prices equate to a “fee simple” price at which the subject must be valued for property tax purposes. The County’s comparable sale #4, the one nearest the subject property in location, contains, also like the subject,

space that is not used or not finished as office space. For these reasons, the Commission finds that the County's comparable sale #4, which sold at \$\$\$\$ per square foot, is the only one of the Petitioner's comparable sales to actually appear comparable to the subject. However, this comparable sale appears inferior to the subject because it is a slightly older structure, has slightly less finished office space, and has less land than the subject. Unfortunately, the County's appraiser does not provide quantitative adjustments to this comparable in order that the Commission might consider how these differences affect the value of the subject property.

11. When both parties' comparable sales are considered, the Commission finds that the most likely selling price for the subject property is somewhere between \$\$\$\$ and \$\$\$\$ per square foot, which equates to a range of \$\$\$\$ to \$\$\$\$. Neither party has requested a value that falls within this range. However, the \$\$\$\$\$, or \$\$\$\$ per square foot, value placed on the property by the County BOE is within this range. Because the Commission does not find PETITIONER REPRESENTATIVE'S quantitative adjustments to be credible and RESPONDENT REPRESENTATIVE chose not to provide quantitative adjustments, the Commission has insufficient information from the parties' sales comparison approaches to determine whether there is a better value in this range than the \$50.04 per square foot value determined by the BOE. For these reasons, the Commission finds that the sales comparison evidence provided by both parties is information is insufficient to show that the BOE's value of \$\$\$\$ per square foot is incorrect.

12. PETITIONER REPRESENTATIVE and RESPONDENT REPRESENTATIVE each submitted income approaches to value that were identical except for the rental rate and the operating

expense rate they used in their respective formulas. Both used a 10% vacancy rate, a 3% reserves expense rate, and a %%%% capitalization rate. While PETITIONER REPRESENTATIVE used a rental rate of \$\$\$\$ per square foot and a 6% operating expense rate to estimate a value of \$\$\$\$\$, RESPONDENT REPRESENTATIVE used a rental rate of \$\$\$\$ per square foot and a 3% operating expense rate to estimate a value of \$\$\$\$\$.

13. The subject property is owner occupied. Even though PETITIONER REPRESENTATIVE used a 10% stabilized vacancy rate in her income approach, she asked the Commission to consider valuing the property using a higher vacancy rate because the market for office space in Salt Lake County had experienced a vacancy rate at least 16% near the lien date and because of unusually high vacancy experienced in the subject property's neighborhood. The Commission rejects this request, because there is no evidence to show that long-term vacancy rates exceed the 10% rate that she used in her income approach and that RESPONDENT REPRESENTATIVE, a certified appraiser, recommended and because the subject building, which was 100% occupied, is not itself experiencing short-term vacancy losses.

14. The County BOE's \$\$\$\$ value was determined using a \$\$\$\$ per square foot rental rate (triple net lease). PETITIONER REPRESENTATIVE contends the rate is too high, while RESPONDENT REPRESENTATIVE contends that it is too low. PETITIONER REPRESENTATIVE provides three lease comparables that leased from \$\$\$\$ to \$\$\$\$ per square foot (triple net lease) to support the \$\$\$\$ per square foot rental rate she used in her formula. These comparables were all located seven to nine blocks away from the subject property. The Petitioner

argued that the subject property would rent at lower rate than most office buildings because it is in an “industrial” area. However, the Commission does not find that the evidence supports such a theory.

If either the \$\$\$\$ or \$\$\$\$ per square foot lease rates is substituted into either parties’ income approach formula, none of the resulting values is close to the lower end of the \$\$\$\$ to \$\$\$\$ range of values shown by the sales comparison approach. However, the \$\$\$\$ per square foot lease comparable would result in a value near the lower end of this range.

15. RESPONDENT REPRESENTATIVE submits five lease comparables that leased from \$\$\$\$ to \$\$\$\$ per square foot (full service lease) to support the \$\$\$\$ per square foot (triple net lease) rental rate that she used. These comparables are further away from the subject than PETITIONER REPRESENTATIVE’S comparable leases. RESPONDENT REPRESENTATIVE explains that the County “converted” these full service lease rates to triple net lease rates by deducting “typical” expenses as obtained from a chart prepared by the County Assessor’s Office for conversion purposes. While such an approach may be appropriate for mass appraisal purposes, the Commission tends to discount the weight placed on the County’s “converted” lease rates because it has submitted no foundation evidence to show that the conversions are accurate and because it is unclear whether a full service lease on a *specific* comparable property can be accurately converted into a triple net lease by deducting *typical* expenses instead of deducting the *specific* expenses that the property actually incurred.

16. Two of the lease comparables that RESPONDENT REPRESENTATIVE submitted in her appraisal were located on STREET 3. She also submitted these two lease comparables to the

County BOE. However, the lease information and the respective conversions that she submitted to the County BOE do not coincide with the information she lists and submitted to the Commission as part of her appraisal. Furthermore, RESPONDENT REPRESENTATIVE concludes that the subject is not superior to *any* of her lease comparables and recommends using the lowest converted, but unadjusted lease comparable as the subject's estimated rental rate. As a result, she has not submitted a "lower" range of lease comparables, which might indicate that the subject's lease rate may, in fact, be lower than the ones she submitted. The Commission notes that a seemingly superior property (newer and with more finished office space) located at ADDRESS 3 leased for \$\$\$\$ per square foot, which is less than the \$\$\$\$ lease rate adopted by the County BOE. Although RESPONDENT REPRESENTATIVE provided this specific lease comparable to the County BOE, she chose not to include it in her appraisal. For all these reasons, the Commission is not convinced that the \$\$\$\$ per square foot rental rate derived by RESPONDENT REPRESENTATIVE in her appraisal is more reasonable or convincing than the \$\$\$\$ per square foot rate she previously derived and the County BOE adopted. Accordingly, the Commission declines to raise the subject's fair market value on the basis of RESPONDENT REPRESENTATIVE'S most recent income approach derived with a \$\$\$\$ per square foot rental rate.

17. The Petitioner contends that an income approach for the subject property should include both a 6% operating expense deduction and a 3% reserves expense deduction. However, no evidence was submitted to show whether an office building leased on a triple net basis would typically experience 6% operating expenses. The opinion of RESPONDENT REPRESENTATIVE,

the County's certified general appraiser, is that an office building leased at on a triple net basis would experience a 3% operating expense and a 3% reserves expense. Although the Petitioner submitted expense information in Exhibit P-2 estimating the *total* expenses a structure would incur (instead of the triple net expenses *only* that would be incurred), this information relates to Class "A" and Class "B" structures, not a Class "C" structure such as the subject. Based on the qualifications of RESPONDENT REPRESENTATIVE as a certified general appraiser and PETITIONER REPRESENTATIVE'S lack of appraisal credentials and the lack of evidence to show what actual triple net expenses would be incurred by a Class "C" office building, the Commission finds that the income approach should include a 3% operating expense deduction and a 3% reserves expense deduction. As a result, the Commission does not find either party's evidence sufficient to show that the County BOE's \$\$\$\$\$ value is incorrect.

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. (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

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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. . . (Utah Code Ann. Sec. 59-2-1006(1).)

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 Lake County*, 943 P.2d 1354 (Utah 1997). The Commission does not find that either the Petitioner or the Respondent has submitted sufficient evidence to show error and support either a lower value, in the Petitioner's case, or a higher value, in the County's case, in this matter.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's request to lower and the Respondent's request to raise the fair market value of the subject property. Accordingly, the Commission sustains the County BOE's decision that the fair market value of Parcel No. #####, as of January 1, 2003, is \$\$\$\$\$. It is so ordered.

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DATED this _____ day of _____, 2005.

Kerry R. 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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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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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