

04-0392
Locally Assessed Property Tax
Signed 01/31/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal No. 04-0392
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel Nos: #####-1 & #####-2
SALT LAKE COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	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. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Marc B. Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Appraisal Manager
 RESPONDENT REPRESENTATIVE 2, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 17, 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 assessed value of the subject property for the lien date January 1, 2003.

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2. The subject property consists of two related parcels, parcel nos. #####-1 and #####-2. It is located at ADDRESS 1, CITY 1, Utah. The parcels combined total 4.38 acres. The County information provided indicates parcel #####-2 is 1.61-acres in size, and according to the County information is part of the economic unit with parcel #####-1. Parcel #####-1 is 2.77 acres and contains the improvements, which consist of 49,500 square feet of retail and office space with a 21,870 square foot storage warehouse. They had been used as a (X) and accompanying (X).

3. Parcel No. #####-1 had originally been assessed at \$\$\$\$ and the County Board of Equalization had sustained the value. Parcel No. #####-2 had originally been assessed at \$\$\$\$ and the value had also been sustained by the County Board of Equalization. Petitioner requests that the parcels be reduced to a combined value of \$\$\$\$.

4. Respondent's representatives had requested that they be allowed to submit a new appraisal for the subject parcels that supported a value higher than that set by the County Board of Equalization. However, the appraisal was not received as evidence in this matter due to the failure on the part of the Respondent to provide a copy to Petitioner ten days prior to the Formal Hearing.

5. Petitioner's representative, PETITIONER REPRESENTATIVE, submitted a sales comparison approach and an income approach with a reconciled value conclusion of \$\$\$\$\$, based on the information she compiled and considered. She testified that she was not an appraiser and was not performing this service for compensation, although the company COMPANY A did charge Petitioner a fee. Respondent objected to the sales and income approach being received on the basis that it was essentially an appraisal and PETITIONER REPRESENTATIVE was not a licensed appraiser. The Commission allows the valuation information presented and compiled by PETITIONER REPRESENTATIVE, but does not give it the weight it would give to an appraisal prepared by a licensed appraiser. The Commission has already referred the issue to the appropriate licensing board for their consideration.

6. The subject property had sold for \$\$\$\$ on September 30, 2004. However, neither side gave much weight to the sale based on the fact that it was between related parties.

7. One of PETITIONER REPRESENTATIVE'S assumptions in her appraisal was that the subject property was "discount" retail space. Three of the four lease comparables presented by PETITIONER REPRESENTATIVE were for discount retail properties that were all much smaller in building size than the subject. Additionally, two of these were in strip malls. The fourth comparable was as short-term lease. The average lease rate from these comparables was \$\$\$\$ per square foot. However, the leases that were the best for determining value for the subject had leased for \$\$\$\$ per square feet and \$\$\$\$ per square foot. It was PETITIONER REPRESENTATIVE'S conclusion that the market lease for the subject property would be \$\$\$\$ per square foot and from this she concluded the income approach would be \$\$\$\$ for both parcels. The Commission, however, finds that PETITIONER REPRESENTATIVE has not adequately supported the \$\$\$\$ lease rate. Other factors in PETITIONER REPRESENTATIVE'S income approach were a 10% vacancy rate, 6% expenses, 3% reserves and a capitalization rate of %%%%. She provided studies supporting both her capitalization rate and vacancy rate.

8. Petitioner's representative offered nine comparable sales. Three of the comparables had been (X). The other comparables had been a former COMPANY B, a former COMPANY C, a former COMPANY D, a former COMPANY E and former COMPANY F. The COMPANY F had sold twice. Seven of these properties had larger building areas than the subject as well as larger land areas. The other two of the nine comparables were smaller properties. Three of the properties and four of the sales were located in CITY 2 and on one was in CITY 3, which are clearly different market areas for valuation purposes. The sale price per square foot for these properties ranged from \$\$\$\$ per square foot to \$\$\$\$ per square foot. Several of these properties were torn down after the sale and a new building constructed. It was PETITIONER REPRESENTATIVE'S value conclusion that the value for the subject should be based on \$\$\$\$ per square

foot. The Commission would note that one of the best comps for the subject, the former COMPANY B located at ADDRESS 2, which was developed into smaller retail spaces after the sale, had sold for \$\$\$\$ per square foot and tended to indicate a value for the subject of at least that amount.

9. It was Respondent's position that the subject property was not a "discount" retail store. RESPONDENT REPRESENTATIVE 2, who is a State Certified General Appraiser, testified that she had visited the subject property and that it was a good grade retail space. Respondent provided photographs of the exterior of the subject building. For that reason Respondent's representatives argued the subject was superior to PETITIONER REPRESENTATIVE'S sales comparables that were mostly discount retail space or warehouse retail space. Additionally Respondent's representatives noted that for Petitioners sales comparables 1, 7 and 9 the buildings had been torn down or substantially rebuilt after the sale. They also provided evidence that Petitioner's sales comparable 3 had been a foreclosure sale. They argued that PETITIONER REPRESENTATIVE'S sale comparable 8 had a second parcel associated with the sale and the land size of the comparable indicated that PETITIONER REPRESENTATIVE included only the parcel with the distribution warehouse, not the high-end retail store as indicated on PETITIONER REPRESENTATIVE'S appraisal.

10. Respondent presented information regarding PETITIONER REPRESENTATIVE'S lease comparables. The Commission agrees upon review that the lease properties were dissimilar to the subject. They were smaller buildings and generally appear to be lower quality "discount retail" space. They were strip mall type spaces or buildings subdivided into small spaces.

11. Respondent also entered as evidence the information that had been submitted at the Initial Hearing to support the County Board of Equalization value. That information points out that the subject has a high traffic count. Three lease comparables and two lease listings were provided. They support lease rates from \$\$\$\$ to \$\$\$\$ per square foot. The Commission would note that all three are significantly smaller than the subject, like the lease comparables presented by Petitioner. The valuation was based on \$\$\$\$ per square

foot for the retail space and \$\$\$\$ per square foot for the storage warehouse, or a combined lease rate of \$\$\$\$ per square foot. This resulted in a unit value supportive of the value set by the County Board.

12. Respondent has entered the assessed value in this matter and evidence in support of the County Board of Equalization's decision. The County had valued parcel no. #####-1, the parcel with the buildings, at \$\$\$\$\$. The assessed value was based on a combined lease rate of \$\$\$\$ per square foot and equated. The second parcel, parcel no. #####-2, is vacant land that the County had included in its unit valuation along with the first parcel and then subtracted a value of \$\$\$\$ from the income approach for the land. The information indicates that at least a portion of this land is used in conjunction with the first parcel so the parcels are appropriately valued as a unit. If the values of the two parcels are added together they total \$\$\$\$ or a value per square foot of \$\$\$\$ per square foot. The County Board's value is presumed to be correct and is reasonable based on the information provided by the County. The Commission considers the evidence presented by Petitioner, lease comparables of properties much smaller and dissimilar to the subject and sales comparables of properties with larger buildings, generally inferior to the subject. Due to the dissimilarities between the subject and the comparables appraisal adjustments would need to be made and Petitioner's representative is not qualified to make those adjustments. Additionally, the Commission finds that Petitioner's lease comparables are supportive of the value placed on this property by the County. Based on this analysis Petitioner has not presented sufficient evidence to overcome its burden of proof in this matter to lower the value.

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 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. . (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). In this matter Petitioner has not sufficiently supported a lower value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the values set by the County Board of Equalization for the two parcels at issue for the lien date of January 1, 2003. The County is ordered to adjust its records according to this decision.

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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 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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