

04-0456  
Locally Assessed Property Tax  
Signed 07/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
Petitioner,	)	
	)	Appeal No.    04-0456
v.	)	
	)	Parcel No    #####-1
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 March 29, 2005. Because the County had not provided the Petitioner the BOE decision issued in this matter and the information relating to it, such evidence was excluded from the Formal Hearing and

not considered in this decision. 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 #####-1 and is located at ADDRESS in Salt Lake County, Utah.

4. The subject property is 1.45 acres of land improved with a 16,758 square foot office/warehouse that was built in 1979. Approximately 20% of the building is office space with the remainder warehouse. RESPONDENT REPRESENTATIVE, the County's certified appraiser, states that because the building may be leased to multiple tenants, the County considers it to be an "industrial flex building" that can generate higher rents than an office/warehouse building that can only house one tenant.

5. The Salt Lake County's Assessor's Office originally assessed the subject property, as of the lien date at issue, at \$\$\$\$\$, which the County Board of Equalization ("County BOE") sustained. Although not appealed, both parties agree that the subject property is one of two properties that comprise an economic unit. The other property, Parcel No. #####-2, is a 0.19-acre lot adjacent to the subject property and was assessed at \$\$\$\$\$ for the 2003 tax year. When the County

values for both parcels are totaled, the economic unit (the 16,758 square foot building and 1.64 acres of land) is assessed at \$\$\$\$\$, which equates to a value of \$\$\$\$\$ per square foot.

6. For the Petitioner, PETITIONER REPRESENTATIVE submitted valuation information in this matter (Exhibit P-1). She is not a licensed appraiser. She prepared both an income approach and a market sales approach to value. In her sales approach, she submitted six comparables that sold at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. She adjusted these comparables and concluded that the subject has a value of \$\$\$\$\$ per square foot, which equates to \$\$\$\$\$ for the two parcels comprising the economic unit at issue. For her income approach, PETITIONER REPRESENTATIVE submitted nine comparable leases that leased at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot and concluded that the subject would lease at \$\$\$\$\$ per square foot. Using this rental rate, an 11.25% vacancy rate, a 6% operating expense rate, a 3% reserves expense rate and a %%% capitalization rate, she concluded that the subject economic unit has a value of \$\$\$\$\$, which equates to \$\$\$\$\$ per square foot.

7. The County submitted an appraisal prepared by RESPONDENT REPRESENTATIVE (Exhibit R-2). RESPONDENT REPRESENTATIVE states that he did not prepare or consider any other valuation methodologies in his appraisal other than an income approach. For his income approach, RESPONDENT REPRESENTATIVE submitted three comparable leases that leased at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot, from which he concluded that the subject would lease at \$\$\$\$\$ per square foot. Using this rental rate, an 11.25% vacancy rate, a 6% operating expense rate (which he explained to be a 3% operating expense and a 3% reserves expense), and a

%%%% capitalization rate, he concluded that the subject economic unit has a value of \$\$\$\$\$, or \$\$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE'S appraisal value is approximately 2% less than the total \$\$\$\$\$ value at which the unit is currently assessed. The only component that the parties agree on in their respective income approaches is the use of an 11.25% vacancy rate.

8. When the nine lease comparables submitted by PETITIONER REPRESENTATIVE and the three comparables submitted by RESPONDENT REPRESENTATIVE are analyzed in relationship to the subject property, the Commission notes that two of PETITIONER REPRESENTATIVE'S comparables are seven blocks away from the subject property, while the remainder of both parties' comparables are more than 30 blocks away, with the majority of them over 50 blocks away. The Commission also notes that RESPONDENT REPRESENTATIVE only submitted comparables that were substantially superior to the subject, as his adjusted rental estimate of \$\$\$\$\$ per square foot for the subject property is 20% lower than the lowest of his rental comparables. The Commission is not convinced that RESPONDENT REPRESENTATIVE'S adjusted rental rate is correct when he provides no comparables in the \$\$\$\$\$ per square foot range at which he estimated the subject, when PETITIONER REPRESENTATIVE provides numerous comparables of office/warehouses and multiple-tenant office/warehouses in the \$\$\$\$\$ to \$\$\$\$\$ range, and has two comparables within seven blocks of the subject that lease for \$\$\$\$\$ and \$\$\$\$\$ per square foot, respectively. Based on the evidence submitted, the Commission would find that the lease rate for the subject would be between \$\$\$\$\$ and \$\$\$\$\$ per square foot. In addition,

PETITIONER REPRESENTATIVE submitted information from NAI Utah Commercial Real Estate Services showing that the “effective average” rental rates of “industrial bulk warehouses” and “industrial manufacturing” buildings ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot (Exhibit P-1, p. 9).

This latter evidence, which the County did not effectively contest, supports the lease rates that PETITIONER REPRESENTATIVE submitted and tends to discount the ones RESPONDENT REPRESENTATIVE submitted. Accordingly, for an income approach, the Commission finds that \$\$\$\$\$ per square foot would be a reasonable rental rate for the subject property.

9. PETITIONER REPRESENTATIVE 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 a multiple tenant office/warehouse leased on a triple net basis would typically experience 6% operating expenses, in addition to a 3% reserves expense. The opinion of RESPONDENT REPRESENTATIVE, the County’s certified appraiser, is that an office/warehouse building leased at on a triple net basis would experience a 3% operating expense and a 3% reserves expense. Based on the qualifications of RESPONDENT REPRESENTATIVE as a certified 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 an office/warehouse such as the subject, the Commission finds that the income approach should include a 3% operating expense deduction and a 3% reserves expense deduction.

10. PETITIONER REPRESENTATIVE uses a %%%%% capitalization rate in her

income approach, while RESPONDENT REPRESENTATIVE uses a % rate in his. PETITIONER REPRESENTATIVE submitted a number of capitalization rate comparables in Exhibit P-1 (p. 8). The first two of these comparables are located near the subject, one with a % rate and the other with a % rate. The majority of the comparables, however, are closer to the % rate that RESPONDENT REPRESENTATIVE uses. PETITIONER REPRESENTATIVE also provides evidence, on page 10 of Exhibit P-1, that 2002 mid-year industrial cap rates were %, while mid-year 2003 rates were %. RESPONDENT REPRESENTATIVE also submits comparables in Exhibit R-1 that support a % rate. Based on the totality of this evidence, the Commission finds that the capitalization rate should be %.

11. Based on the foregoing, the Commission finds that an income approach to value should include a \$\$\$\$ per square foot rental rate, an 11.25% vacancy rate, a 6% total expense rate, and a capitalization rate of %. Using these factors establishes a value of \$\$\$\$ for the economic unit, which equates to \$\$\$\$ per square foot.

11. A value that equates to \$\$\$\$ per square foot is supported by the comparable sales that PETITIONER REPRESENTATIVE submitted in Exhibit P-1. The only two sales within 45 blocks of the subject are the first two sales, which are 12 and 17 blocks away from the subject and sold for \$\$\$\$ and \$\$\$\$ per square foot, respectively. RESPONDENT REPRESENTATIVE admitted that he had not visited any of these comparables to know what their features were, but he questioned PETITIONER REPRESENTATIVE'S adjustments. The first comparable, which sold for

Appeal No. 04-0456

\$\$\$\$ per square foot, appears superior to the subject because it has 50% office space while the subject only has 20%. Although the second comparable, which sold for \$\$\$\$ per square foot, is a larger building than the subject, its percentage of office space is more similar to the subject's. Based on these two comparables, the Commission would expect that the subject would sell at value closer to the \$\$\$\$ per square price than the \$\$\$\$ per square foot price. The \$\$\$\$ per square foot rate derived from the income approach discussed above falls within this range and is closer to the price at which the second sales comparable sold.

12. For these reasons, the Commission finds that, based on the evidence and testimony submitted at the Formal Hearing, the fair market value of the economic unit is \$\$\$\$\$, as derived using the income approach discussed above. When the \$\$\$\$ value of Parcel No. #####-2 is subtracted from the total unit value of \$\$\$\$\$, the fair market value of the subject property, Parcel No. #####-1, 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. (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

Appeal No. 04-0456

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). The Commission finds that the Petitioner has submitted sufficient evidence not only to call the County BOE's value into question, but also to show that its value should be reduced from \$\$\$\$\$ to \$\$\$\$\$ for the 2003 tax year.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of Parcel No. #####-1, as of January 1, 2003, should be reduced from \$\$\$\$\$ to \$\$\$\$\$ for property tax



Appeal No. 04-0456

purposes. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision.

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

**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.

*KRC/04-0426.fof.doc*