

04-0685
Locally Assessed Property Tax
Signed 06/23/2005

BEFORE THE UTAH STATE TAX COMMISSION

| | | | |
|-----------------------|---|--------------|-------------------------------|
| PETITIONER, |) | | |
| |) | ORDER | |
| |) | | |
| Petitioner, |) | Appeal No. | 04-0685 |
| |) | | |
| v. |) | Parcel No. | Multi (see attachment) |
| |) | | |
| BOARD OF EQUALIZATION |) | Tax Type: | Property Tax/Locally Assessed |
| OF SALT LAKE COUNTY, |) | | |
| STATE OF UTAH, |) | Tax Year: | 2003 |
| |) | | |
| Respondent. |) | Judge: | Chapman |

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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Representative
PETITIONER REPRESENTATIVE 2, MAI

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Salt Lake County
Assessor's Office
RESPONDENT REPRESENTATIVE 2, 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 October 21, 2004. After the Petitioner proffered its

case on this date, it was discovered that the County planned to proffer evidence that it had not provided to the Petitioner prior to the hearing. PETITIONER REPRESENTATIVE 1 objected and asked the Commission to exclude the County's information. As an alternative, the presiding officer continued the hearing to a future date to allow the Petitioner an opportunity to review the evidence and prepare a rebuttal to it. The Initial Hearing was continued to and held on December 2, 2004.

At issue is the 2003 fair market value of three parcels, Parcel Nos. #####-2, #####-3, and #####-1. The three parcels are owned by PETITIONER ("PETITIONER") and comprise a single economic unit that is located at ADDRESS in CITY, Salt Lake County, Utah. The three parcels total 4.33 acres in size and are the location of the PETITIONER facility, which consists of buildings built between 1931 and 1974 that are used for agricultural retail, warehouse, and distribution purposes.

For the 2003 tax year, the County Assessor assessed the three parcels for a total value of \$\$\$\$\$ using a cost approach. Based on a new appraisal prepared and submitted by the assessor's office in which it considered the three parcels as a single economic unit, the County BOE increased the total fair market value to \$\$\$\$\$, divided among the three parcels as follows:

| <u>PARCEL NO.</u> | <u>Original Assessed Value</u> | <u>County BOE Value</u> |
|-------------------|--------------------------------|-------------------------|
| #####-2 | \$\$\$\$\$ | \$\$\$\$\$ |
| #####-3 | \$\$\$\$\$ | \$\$\$\$\$ |
| #####-1 | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |

derived, respectively, from rents and sales of office/warehouses. From its analysis, the County concludes that the three subject parcels, as an economic unit, have a fair market value of \$\$\$\$\$. The Commission notes, however, that the property is currently used as an agricultural distribution/warehouse/retail complex and is not convinced, without evidence, that office/warehouse comparables are unquestionably similar to the subject's space.

The Petitioner also proffered an appraisal prepared by PETITIONER REPRESENTATIVE 2 on May 5, 2004, in which PETITIONER REPRESENTATIVE 2 estimated a value for the subject property using an income approach derived from rents of office/warehouses. Using this approach, PETITIONER REPRESENTATIVE 2 estimated the economic unit to have a value of \$\$\$\$\$, if it could be rented as an office/warehouse. The Petitioner explains that, even though it had PETITIONER REPRESENTATIVE 2 prepare this second appraisal as an alternative to his original appraisal, it did so only to contest the County's analysis, in case the Commission found that the improvements did add value to the parcels. Nevertheless, the Petitioner states that it believes the improvements add no value to the land. PETITIONER REPRESENTATIVE 2 also reiterates that, in his opinion, the property would never sell as an office/warehouse, that any potential buyer would remove the current improvements, and that all office/warehouse comparables used both by himself and the County were far superior to the subject property.

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).

DISCUSSION

The Petitioner has proffered an appraisal and testimony from an appraiser who *believes* that the improvements add no value to the property. Due to the nature of and the conditions that affect the property, the Commission does not find such a conclusion to be unbelievable. However, the County has proffered testimony from two of its appraisers who *believe* that the

improvements do add value. Unfortunately, neither party has proffered evidence to show at what price another old agricultural warehouse/distribution/retail center would rent or sell for. With such information, the Commission would be better able to determine whether the improvements at issue added value or not. Without such information or at least a more detailed discussion of the market or lack of market for such properties, the Commission cannot determine which of the appraiser's beliefs are more accurate.

In addition, both parties have prepared and proffered what the Commission would assume is their "best" possible income approach to value. Both parties' approaches produce a value in excess of that for the land alone, suggesting that the improvements do add value. If the improvements actually added no value, the Commission would expect an income approach to show a value lower than that for the land alone. For these reasons and based solely on the information provided at the Initial Hearing, the Commission does not find that the fair market value of the three parcels at issue is equal to the value of the land alone.

The information that remains for the Commission to consider is the Petitioner's income approach to value and the County's appraisal, which includes a cost approach, income approach, and market approach. For the Petitioner, PETITIONER REPRESENTATIVE 2 prepared his income approach based on the subject property having 68,506 square feet of rentable square footage (later corrected to 76,010 square feet). For the County, its appraisers prepared their appraisal based on the subject having 105,438 square feet (later corrected to 99,646 square feet). The primary difference between the 76,010 square feet included by the PETITIONER REPRESENTATIVE 2 and

the 99,646 square feet included by the County appraisers concerns approximately 8,000 square feet in the basement and 15,000 square feet in a tower or silo that houses feed equipment and hoses used in the agricultural business. PETITIONER REPRESENTATIVE 2 stated that office/warehouses rarely have basement space for rent and that the subject's basement was as low as 6½ to 7 feet in some areas. Furthermore, he contends that the existence and location of steel beams, pipes, and hoses in the tower or silo sections prevents these sections from being leased as office/warehouse space, describing the area as "like walking through a submarine." Based on the testimony of the parties and considering the office/warehouse comparables that each used in their respective analyses, the Commission finds that the Petitioner's approach appears more reasonable; i.e., that if the subject actually were to sell or rent as an office/warehouse instead of its current use, it is unlikely that the basement and tower space, in its current state, would be serviceable as office/warehouse space. For this reason, the Commission finds that the second appraisal prepared by PETITIONER REPRESENTATIVE 2 provides the more convincing methodology to estimate the value of the economic unit.

Nevertheless, there were several errors associated with PETITIONER REPRESENTATIVE 2's income approach that require adjustment. As mentioned earlier, the rentable square footage (as an office/warehouse) needs to be adjusted to 76,010 square feet. Furthermore, based on the testimony of the parties, the adjustment for wall height on comparable #3 needs to be revised to a 0% adjustment and all finished area adjustments needs to be increased 5%. Such revisions result in an adjusted rental rate of \$\$\$\$ per square foot for the 76,010 square feet of

rentable space, which produce a PGI of \$\$\$\$\$. Applying the 10% vacancy rate, 5% expense rate, and %%% capitalization rate in PETITIONER REPRESENTATIVE 2's methodology to a PGI of \$\$\$\$\$ results in a value of \$\$\$\$\$ for the economic unit.

From the Respondent's comparables sales, comparable #1, which sold for \$\$\$\$\$ per square foot, appears more like the subject than the other two sales. Pictures of comparable sale #2 and #3 show these buildings to be clearly superior to the subject in design and appeal as an office/warehouse. If the \$\$\$\$\$ per square foot is applied to the 76,010 rentable square feet (as determined by PETITIONER REPRESENTATIVE 2) and \$\$\$\$\$ is added for the value of the basement, as the County suggests, the value of the economic unit would be \$\$\$\$\$. If the \$\$\$\$\$ per square foot were applied to the County's 90,894 rentable square feet and \$\$\$\$\$ added for the value of the basement, the value of the economic unit would be \$\$\$\$\$. Accordingly, PETITIONER REPRESENTATIVE 2's revised income approach value of \$\$\$\$\$ falls within the range of values derived from a selling price of \$\$\$\$\$ per square foot.

For the reasons discussed above, the Commission finds that, based on the evidence provided at the Initial Hearing, the value of the three parcels at issue should be reduced to a total value of \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the total fair market value of the three parcels at issue should be reduced from \$\$\$\$\$ to \$\$\$\$\$ for the 2003 tax year. The

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reduction in value should be applied proportionately to the value of the improvements associated with the three parcels, as follows.

| | County BOE Value | Commission Decision |
|---------------------------|-------------------------|----------------------------|
| Parcel No. #####-2 | | |
| Real Estate | \$\$\$\$\$ | \$\$\$\$\$ |
| Improvements | \$\$\$\$\$ | \$\$\$\$\$ |
| TOTAL | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |

| | | |
|---------------------------|-------------------|-------------------|
| Parcel No. #####-3 | | |
| Real Estate | \$\$\$\$\$ | \$\$\$\$\$ |
| Improvements | \$\$\$\$\$ | \$\$\$\$\$ |
| TOTAL | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |

| | County BOE Value | Commission Decision |
|---------------------------|-------------------------|----------------------------|
| Parcel No. #####-1 | | |
| Real Estate | \$\$\$\$\$ | \$\$\$\$\$ |
| Improvements | \$\$\$\$\$ | \$\$\$\$\$ |
| TOTAL | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> |
| ECONOMIC UNIT | \$\$\$\$\$ | \$\$\$\$\$ |

The Salt Lake County Auditor is 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

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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.

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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ATTACHMENT

The parcels at issue in this appeal:

#####-2

#####-3

#####-1