

04-0723
Locally Assessed Property
Signed 01/24/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0723
	)	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, from COMPANY
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 January 10, 2005.

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.

Appeal No. 04-0723

The subject property is the (X) located at approximately ADDRESS in CITY, Utah.

The shopping center includes a strip mall, together with a (X) store, a restaurant and other retail establishments. The representative of Petitioner presented a proposed income statement based upon the actual income and expenses for 2002. The actual effective gross income for that year was \$\$\$\$\$. The actual expenses for that period were \$\$\$\$\$, to leave a net operating income of \$\$\$\$\$. Petitioner's representative capitalized that income at %%%%, to arrive at an actual value of \$\$\$\$\$. However, there were some parcels of the shopping center that were not under appeal, and the County Assessor valued those parcels of property at \$\$\$\$\$. Therefore, Petitioner deducted the assessed value of those unappealed properties from the total value of the center, to arrive at a value of \$\$\$\$\$ for the appealed parcels of the shopping center. Petitioner's representative is an accredited appraiser in the State of STATE, but is not a licensed appraiser in the State of Utah.

Petitioner's representative did not present either a comparable sales approach or a cost approach to use in determining the value.

Respondent's representative presented an income approach to value for the property by using a lease rate of \$\$\$\$\$ per square foot for most of the mall. This was a blended rate determined based upon a lease rate of \$\$\$\$\$ per square foot for the strip center and \$\$\$\$\$ per square foot for the discount store. Respondent then used a 10% vacancy rate, expenses of 10%, and a capitalization rate of %%%%. Respondent also included an amount of office space which is part of the facility of 1,540 square feet at a lease rate of \$\$\$\$\$ per square foot.

Respondent also represented that the lease on the restaurant was more than 20 years old, and the lease rate was \$\$\$\$\$ per square foot, whereas the restaurant has recently been renovated and leased for \$\$\$\$\$ per square foot. Respondent further represented that in the past, the shopping center has experienced

excessive vacancy, but that is now corrected and new tenants have moved in at higher lease rates than were previously used. Respondent represented that the old low lease rates are expiring, and the low value determined by Petitioner's representative was because of the old low lease rates which were well below market rates. Respondent represented that the newer leases are in a range of \$\$\$\$\$ - \$\$\$\$\$ per square foot, which is significantly above the old lease rates. Those new higher lease rates would produce an increased value for the property.

Based upon Respondent's valuation, it determined values of \$\$\$\$\$, plus \$\$\$\$\$ for the restaurant, for a total value of \$\$\$\$\$. Respondent did not request an increase, but indicated that the value determined was supportive of the value determined by the Board of Equalization.

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

Appeal No. 04-0723

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

In this matter, Petitioner presented evidence which might support a lower value. However, Respondent also presented evidence which would support a slightly higher value. Further, Respondent represented that the reason Petitioner's evidence indicates a lower value was because of the very old, very low lease rates which were reflected in the actual revenues, and which were not reflective of the current fair market value. Respondent further presented evidence showing that the newer lease rates were significantly higher than Petitioner's actual income which reflected the old lower lease rates.

Therefore, the Commission determines that the actual income, which consisted of older and lower lease rates, does not accurately indicate the fair market value of the subject property.

In addition, Petitioner has the burden of proof to establish that there has been an error in the value determined by Respondent, and to also present a sound evidentiary basis for reducing the original value to the amount proposed by Petitioner. Petitioner has failed to meet both of these burdens of proof.

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 \$\$\$\$\$. 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:

Appeal No. 04-0723

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.

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

GBD/ssw/04-0723.int