

04-0886
Locally Assessed Property Tax
Signed 04/19/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0886
	)	Parcel No.	#####
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION)		
OF SALT LAKE COUNTY,	)	Tax Year:	2003
STATE OF UTAH,)		
	)	Judge:	Robinson
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:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, from COMPANY
For Respondent: RESPONDENT REPRESENTATIVE, 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 4, 2005. Petitioner is challenging the Respondent's assessed value of the above noted property.

The Salt Lake County Assessor originally valued the subject property at \$\$\$\$\$. The Salt Lake County Board of Equalization heard the matter and sustained a value of \$\$\$\$\$. Petitioner appealed that decision to the Utah State Tax Commission.

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Respondent filed information regarding the value of the subject property on December 20, 2004. Respondent requested the evidence be considered to lower the value of the subject property from \$\$\$\$\$ to \$\$\$\$\$. Respondent submitted a post-hearing request to further reduce the value to \$\$\$\$\$.

At the beginning of the hearing, Respondent objected to Petitioner's submission of evidence on December 30, 2004. Respondent objected on the grounds Petitioner had not provided Respondent with copies of the documents at least ten days prior to the hearing. Petitioner's representative responded by saying she had been ill and did not realize she could have requested a continuance.

Petitioner objected to use of the BOE record as evidence, as it had not been submitted for the hearing before the Commission. The objections were taken under advisement and the hearing went forward.

The property in question is located at ADDRESS 1 in CITY 1, Utah. It consists of 7.83 acres. It is the home of (X). Located on the property is an office warehouse building constructed in 1986. It is 40,131 square feet in size. Petitioner said use of the space is divided between light industrial/warehouse use (approximately 60%) and office space (approximately 40%). Respondent said it was evenly divided, but that only 70% of the office space was finished.

Petitioner used the income approach to reach a proposed value of \$\$\$\$\$ for the subject property. Petitioner listed income as \$\$\$\$\$, based on a rent of \$\$\$\$\$ per square foot. Both Petitioner and Respondent used a vacancy and collection loss rate of 8%. Using Petitioner's income figure, the dollar amount of vacancy and collection loss is \$\$\$\$\$. Petitioner listed no other income from the property. The effective gross income, according to Petitioner, is \$\$\$\$\$.

Petitioner listed operating expenses of 7%, or \$\$\$\$\$. Respondent used a 6% rate of expenses in its calculations. Petitioner listed 3% (\$\$\$\$\$) as reserves. Respondent did not mention reserves in its calculations. Petitioner and Respondent used a capitalization rate of %%%%. Petitioner's rounded value, based on the income method, is \$\$\$\$\$. Petitioner used nine comparable leases in arriving at this value.

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Petitioner also submitted a sales comparison approach to valuation. Petitioner provided information on six sales. Each was adjusted for building square footage, percentage of office space, year built, land size, and wall height. The adjusted prices per square foot ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The average price per square foot was \$\$\$\$\$ per square foot. Petitioner said after speaking with agents, managers, appraisers, and considering the pertinent data, the fair market value price per square foot was \$\$\$\$\$. Multiplying that by 40,131 square feet yielded a value of \$\$\$\$\$. Petitioner added wetlands, valued by Petitioner at \$\$\$\$\$, for a total value of \$\$\$\$\$.

Respondent offered additional information, beyond that which it introduced at the Board of Equalization, to lower the value it placed on the property. Most of that information was attached to Respondent's letter of December 20, 2004. Respondent, post hearing, provided further information based on a question that arose during the hearing about the acreage of the subject parcel.

The first document attached to Respondent's letter is captioned Utah State Tax Commission Appeal Recommendation. It states that approximately 50% of the available space has light industrial/warehouse application, with the other 50% having office use. It notes that approximately 70% of the office space is finished.

The first document references three lease rates from similar properties. The rates range from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot. Information regarding the three properties was also attached. All of the comparable leases offered by Respondent are triple net leases.

The first is located at ADDRESS 2. The property consists of 10.08 acres. It has a building with a rentable area of 28,800 square feet. It is a Class C building with 79% office space. It was constructed in 1998. It rents for \$\$\$\$\$ per square foot.

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The second is located at ADDRESS 3. The property consists of 1.30 acres. It has a building with a rentable area of 12,308 square feet. It is a Class C building with 25% office space. It was constructed in 1996. It rents for \$\$\$\$ per square foot.

The third is located at ADDRESS 4. The property consists of 2.10 acres. It has a building with a rentable area of 77,440 square feet. It is a Class C building with 50% office space. It was constructed in 1999. It rents for \$\$\$\$ per square foot. Respondent did not indicate adjustments to the comparables. The rent used in Respondent's income approach was \$\$\$\$ per square foot.

Respondent also offered information regarding five sales. The first property is located at ADDRESS 5, in CITY 1, approximately ten miles south of the subject. It was built in 1997. It is a Class C building with 12,300 square feet of rentable area. (Petitioner offered rebuttal evidence from Salt Lake County commercial records showing a total of 13,785 square feet.) Respondent asserts the price per square foot is \$\$\$\$. The building is located on .52 acres. The property sold on August 1, 2001 for \$\$\$\$. (Value per square foot, using the rebuttal evidence, is \$\$\$\$.)

The second is located at ADDRESS 6, in CITY 2, approximately 22.5 miles south, and slightly west of the subject. It was built in 1999. It is a Class C building with 14,746 square feet of rentable area. Respondent asserts the price per square foot is \$\$\$\$. The building is located on 2.13 acres. The property sold on August 15, 2003 for \$\$\$\$.

The third is located ADDRESS 7, in CITY 3, approximately 18 miles south of the subject. It was built in 1994. It is a Class C building with 13,089 square feet of rentable space. Respondent asserts the price per square foot is \$\$\$\$. The building is located on .69 acres. The property sold on December 19, 2003 for \$\$\$\$.

The fourth is located at ADDRESS 8, in CITY 1, approximately nine miles south of the subject. It was built in 1986. It is a Class C building with \$\$\$\$ square feet of rentable space. Respondent

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asserts the price per square foot is \$\$\$\$\$. The building is located on .45 acres. The Property sold on December 10, 2003 for \$\$\$\$\$.

The fifth is the same as the fourth. It also sold on February 16, 2000 for \$\$\$\$\$. Respondent asserts the price per square foot was \$\$\$\$\$.

The average price per square foot of these comparables is \$\$\$\$\$ per square foot of rentable space. Unlike Petitioner, who adjusted for square footage, percentage of office space, year built, land size, and wall height, Respondent did not make any adjustments between the comparables it offered and the subject. Neither party made an adjustment for location. Assuming no adjustments to Respondent's comparables were needed, using the average price per square foot of rentable space (\$\$\$\$\$) times the rentable square feet of the subject (40,131) yields a value of \$\$\$\$\$, rounded to \$\$\$\$\$. Using the price per square foot for the Respondent's comparable number four, (\$\$\$\$\$) times the rentable square feet of the subject (40,131) yields a value of \$\$\$\$\$, rounded to \$\$\$\$\$. As both were built in 1986, at least no adjustment for age is indicated. \$\$\$\$\$ is slightly more than the value in the Assessor's post hearing conference report, listing a value of \$\$\$\$\$.

This last value submitted by Respondent is a downward adjustment from the value sustained by the Board of Equalization. The County Assessor initially valued Petitioner's property at \$\$\$\$\$. This is slightly less than the value of \$\$\$\$\$, which was based on Respondent's direct capitalization method assuming a rentable area of 47,044 square feet at \$\$\$\$\$ per square foot. The Board of Equalization sustained a value of \$\$\$\$\$.

In its evidence provided during the hearing, Respondent acknowledged the rentable square footage was not 47,044, but 40,131. Recalculating, using the revised square footage at \$\$\$\$\$ per square foot, and Respondent's adjusted figure for excess land, down from \$\$\$\$\$ to \$\$\$\$\$, yields a value of \$\$\$\$\$, rounded to \$\$\$\$\$.

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Petitioner's rebuttal evidence shows a possible conflict between evidence submitted by Respondent and information contained in Respondent's records. Respondent's evidence listed its comparable number 1 as having 12,300 square feet of Gross Building Area (GBA) and rentable area. Petitioner submitted a printout of a Salt Lake County Commercial Record showing a total of 13,785 square feet for Respondent's comparable number one. Respondent's evidence regarding its sales comparable number two shows a GBA of 15,336 square feet and a rentable area of 14,746 square feet. The printout shows a total of 14,746 square feet. Respondent's evidence regarding its sales comparable number three 13,089 square feet of GBA and rentable area. The printout shows a total building area of 12,237 square feet.

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 adopting a lower valuation.

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

Decisions to admit evidence not filed and provided to the opposing party within ten days prior to the hearing are made on a case by case basis. The Notice of Hearing states, "Failure to provide the documents in advance in accordance with this order may result in the exclusion of such evidence from consideration. However, the presiding officer may admit new documentary evidence that is presented for the first time at the hearing if such action is in the interest of justice."

Petitioner did not provide Respondent with the evidence upon which it intended to rely before the Commission. However, Respondent had most of Petitioner's information as a result of the Board of Equalization hearing. The Commission finds that the interests of justice are served by admitting Petitioner's evidence, and that Respondent suffered no prejudice, as it had most of the Petitioner's evidence at the Board of Equalization hearing. Thus, the evidence is admitted.

Petitioner's evidence is sufficient to demonstrate an error in the Respondent's value. Indeed, conflicts between Respondent's evidence and records, and changes in Respondent's characterizations of the subject property's square footage, and land size, support Petitioner's contention that there is an error in the original assessment. Respondent has revised its value downward. The question remaining is whether Petitioner's proposed value, or Respondent's revised value, or some other value based on the evidence, should be assigned.

Neither party provided persuasive evidence in support of the value it requested be accepted by the Commission. The decision of the Board of Equalization, absent evidence supporting a different value, is presumed to be correct. When apparent factual errors regarding the square footage of the building and land area are corrected, the Board of Equalization value is \$\$\$\$\$.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property to be \$\$\$\$\$. The Salt Lake County Auditor is hereby 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 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.

R. Spencer Robinson
Administrative Law Judge

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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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