

04-0893  
Locally Assessed Property Tax  
Signed 08/31/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	04-0893
	)	Parcel Nos.	#####-1
v.	)		#####-2
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)		
OF SALT LAKE COUNTY,	)	Tax Year:	2003
STATE OF UTAH,	)		
	)	Judge:	Robinson
Respondent.	)		

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**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

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 parcel #####-1 at \$\$\$\$\$. The Salt Lake County Board of Equalization ("BOE" or "Board") heard the matter and determined a new value of \$\$\$\$\$. The reason for the reduction related to the building. The Assessor originally valued it at \$\$\$\$\$. The Board

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established a value of \$\$\$\$\$ for the building, finding most of the value was in the land. The Assessor originally valued parcel #####-2 at \$\$\$\$\$. The Board heard the matter and sustained a value of \$\$\$\$\$. The total sustained value of the two parcels was \$\$\$\$\$. The total original value was \$\$\$\$\$. Petitioner appealed those decisions to the Utah State Tax Commission.

Respondent filed information regarding the value of the subject property on December 20, 2004. Respondent requested the evidence be considered to raise the value of the subject property from \$\$\$\$\$, the value sustained by the Board of Equalization, to \$\$\$\$\$. Petitioner submitted information regarding the value of the subject property on December 30, 2004.

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 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 in CITY, Utah. It consists of two adjacent parcels, with a total area of .19 acres. It is the home of a ( X ) shop. Located on the property is a building originally constructed in 1903, with additional construction taking place in 1927. It is 6,345 square feet in size. The main retail space, including a preparation area and office, consists of 3,293 square feet. The remainder of the space is warehouse space. It is used for inventory storage, particularly during times of high volume sales around certain holidays.

Petitioner used the sales comparison approach to reach a total value of \$\$\$\$\$ for both parcels. This is based, in part, on 1,088 square feet of retail space, and warehouse area of 6,132 square feet, for a total of 7,220 square feet. These figures differ from those of Respondent. Petitioner did not separate the

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preparation area from the warehouse. Respondent included the preparation and office space. Respondent's square footage total is 6,345, with 3,293 square feet considered the main retail area.

Petitioner calculated the value based on a 15% allocation of space to retail and office. Using Respondent's figures, 52% of the available space is retail and office space.

Petitioner provided information on six sales. Each was adjusted for building square footage, percentage of office space, year built, and land size. The adjusted prices per square foot ranged from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The average price per square foot was \$\$\$\$\$. Petitioner said after speaking with agents, managers, appraisers, and considering the pertinent data, the market price per square foot was \$\$\$\$\$. Multiplying that by 7,220 square feet yielded a value of \$\$\$\$\$, rounded to \$\$\$\$\$.

With regard to the comparable sales used by Petitioner, Petitioner's representative acknowledged she had not visited comparable two and did not know the nature of the business. She acknowledged that comparable four was a plumbing and heating business. She acknowledged she did not know the nature of the business conducted in comparable six. She acknowledged she had made no adjustment for zoning. Her comparables one, three, four, and six are zoned C-G. Comparables two and five are zoned M-1. She said she made no location adjustment, as she maintained all neighborhoods were the same.

Respondent said the subject was in a superior location, near a ( X ), on a busy street, with excellent exposure and ready access. Respondent asserted Petitioner's comparables were not similar with regard to these features.

Petitioner also used the income approach to valuation. Petitioner's representative used a market rent of \$\$\$\$\$ per square foot for what she considered to be the 1,088 square feet of retail space, and warehouse rent of \$\$\$\$\$ for 6,132 square feet. This produced income of \$\$\$\$\$. A vacancy and collection loss rate of 8% (\$\$\$\$\$) yielded an EGI of \$\$\$\$\$.

Petitioner's representative deducted 7% (\$\$\$\$) for operating expenses and a 3% (\$\$\$\$) reserve for replacements. NOI was \$\$\$\$\$. Petitioner and Respondent used a capitalization rate in their calculations of %%%%. Petitioner's value using this approach and assumptions is \$\$\$\$\$, rounded to \$\$\$\$\$.

Petitioner used 1,088 square feet of retail space in her calculations. The Commission finds Respondent's figure of 3,293 square feet of retail space, with a total of 6,345 square feet, is an accurate measurement. Applying Petitioner's income approach of \$\$\$\$ per square foot for retail space and \$\$\$\$ per square foot for warehouse space to Respondent's square footage figures yields a value of \$\$\$\$\$. This significantly exceeds the value of \$\$\$\$\$ requested by Petitioner in the instant case, and is much closer to the \$\$\$\$\$ value sustained by the Board of Equalization.

Respondent, through RESPONDENT REPRESENTATIVE, offered additional information, beyond that which was introduced at the Board of Equalization, to raise the value placed on the property by the Board. That information was attached to Respondent's letter of December 20, 2004. Respondent altered some of the data contained therein to the benefit of the Petitioner at the hearing.

The last value submitted by Respondent is an upward adjustment from the value sustained by the Board of Equalization. Respondent initially valued Petitioner's property at \$\$\$\$\$. It requested a new value of \$\$\$\$\$. In its evidence provided during the hearing, Respondent acknowledged the rentable square footage was not 6,434, the figure used in the RESPONDENT REPRESENTATIVE'S original calculations, but 6,345, which is reflected in the assessor's notes. Recalculating, using the revised square footage of 6,345 at \$\$\$\$ per square foot (based on seven comparable lease rates), yields a new value.

The recalculated new value is based on a potential gross income of \$\$\$\$\$ (6,345 square feet multiplied by \$\$\$\$\$), with a vacancy and collection loss rate of 6%, or \$\$\$\$\$, for an effective gross income of

\$\$\$\$\$. Respondent assumed 6% for reserves for expenses (\$\$\$\$\$), for a net operating income of \$\$\$\$\$. Using a capitalization rate of %%%%% yields a rounded capitalized value of \$\$\$\$\$.

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).

5. The presumption of correctness for the original valuation does not arise unless and until available evidence supporting the original property valuation is submitted to the Commission. *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000).

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.

Respondent did not provide Petitioner the evidence from the Board of Equalization. Respondent did provide Petitioner the additional evidence upon which it urged a higher value than that sustained by the Board of Equalization. Petitioner's objection to the evidence from the Board of Equalization is sustained. The additional evidence, provided to Petitioner at least ten days prior to the hearing, is admitted.

Petitioner's evidence is sufficient to call into question the Board of Equalization's value. Using Petitioner's retail square footage (1088), the value is \$\$\$\$\$. Using the Respondent's retail square footage (3,293), the value is \$\$\$\$\$. This is \$\$\$\$\$ less than the value sustained by the Board of Equalization.

Petitioner made no adjustments for zoning or location. She did not make adjustments for the nature of the business being conducted. Petitioner did not know the nature of the businesses being conducted at Petitioner's sales comparison numbers two and six.

Based on the totality of the evidence, the Commission finds that the underlying premise of the original BOE decision was fundamentally sound. However, under *Utah Railway*, there is no way to support that value based on the evidence presented in this appeal. Neither party presented any evidence to support the method used by the BOE. Therefore the Commission will defer to the methodologies used by the parties. The Commission believes that neither party established sufficient evidence under the sales comparison approach. Consequently, the income approach is determined to be the most reliable indicator of value for this proceeding.

In determining the appropriate information to use in the income approach, the Commission recognizes that RESPONDENT REPRESENTATIVE, having appeared before this body previously, and as an employee of the Assessor's Office, is licensed to perform appraisals in the State of Utah. PETITIONER REPRESENTATIVE is not. Therefore the Commission will defer to RESPONDENT REPRESENTATIVE judgment and analysis unless the facts dictate otherwise. In the present case, the Commission finds that the only two steps in the income approach that have been sufficiently brought into question are the comparable leases used to establish the lease rates.

RESPONDENT REPRESENTATIVE relied on two comparable retail leases that are located several miles from the subject and are not relevant to the subject property. His third lease is located about two blocks north of the subject property, and rents at a current rate of \$\$\$\$ per sq. ft.. This is the highest possible rent, and is lower than the \$\$\$\$ figure he used for the retail space. RESPONDENT REPRESENTATIVE also provided additional rents in the general neighborhood that ranged from\$\$\$\$ to \$\$\$\$\$. Presumably these were used to support a projected lease rate of \$\$\$\$ for the warehouse space.

PETITIONER REPRESENTATIVE provided several retail leases in the immediate and general neighborhoods that ran from \$\$\$\$\$ to \$\$\$\$\$. The Commission believes that the most relevant lease is

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her comparable number 3, located about 2 blocks south of the subject property, which rented for \$\$\$\$\$. She did not provide any warehouse rents, but used a figure of \$\$\$\$\$ per sq. ft.

In reviewing these leases, the Commission believes several adjustments should be made to Respondent's appraisal on top of the correction for size. First, the appropriate market rental rate should be \$\$\$\$\$. The most representative rent was Petitioner's comparable number 3, and was supported by other rents. Second, although Respondent used a figure of \$\$\$\$\$ for the warehouse space, the comparable leases supported the \$\$\$\$\$ rate used by the Petitioner. With the exception of those two adjustments, along with the size correction, the Commission will rely on RESPONDENT REPRESENTATIVE'S income approach to establish an estimate for fair market value. Applying Petitioner's rents to Respondent's income approach yields a figure of \$\$\$\$\$, rounded to \$\$\$\$\$, for the two parcels combined.

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.



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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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R. Spencer Robinson  
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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