

04-1347,48,54,55,56
Locally Assessed Property Tax
Signed 03/13/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal Nos. 04-1347, 04-1348, 04-1354,
)	04-1355 & 04-1356
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel Nos: #####-1, #####-2, #####-3,
IRON COUNTY,)	#####-4 & #####-5
STATE OF UTAH,)	Tax Year: 2004
)	Judge: Phan
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.

Presiding:

Marc B. Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
For Respondent: RESPONDENT REPRESENTATIVE 1, Iron County Assessor
 RESPONDENT REPRESENTATIVE 2, Iron County
 RESPONDENT REPRESENTATIVE 3, MAI

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 11, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien date January 1, 2004.

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2. The subject property consists of five non-adjacent parcels, parcel nos. #####-1, #####-2, #####-3, #####-4, #####-5. The property is located at approximately ADDRESS, CITY 1, Utah. The combined assessed value for all five parcels was \$\$\$\$\$. The County Board of Equalization sustained the value. The individual parcels were valued by the County Assessor and upheld by the Board of Equalization as follows:

#####-5	\$\$\$\$\$
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$

3. The parcels combined are 22.77 acres. The property is improved with a total of 1,521 self-storage units that range in size from 5 feet by 6 feet to 24 feet by 28 feet. The storage units were constructed in stages over the years from 1973 to 2002. Additionally there is a shop building that is divided into 15 units. The shop building is a concrete block structure that was constructed in 1997. The shop building contains 15,210 square feet of area. In addition to the storage units and shop units there is a modular residence and office building that was constructed in 1995. The overall effective age of the improvements is 15 years. Other site improvements include asphalt paving, gravel and chain link fencing.

4. The highest and best use as improved is for the current use as a self-storage facility.

5. Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE 3, MAI. The appraisal had been prepared for a property valuation appeal for the tax year 2003. RESPONDENT REPRESENTATIVE 3 valued the parcels as one economic unit. It was RESPONDENT REPRESENTATIVE 3's conclusion that the combined market value of all five parcels of the property as of January 1, 2003, was \$\$\$\$\$. In reaching this conclusion, RESPONDENT REPRESENTATIVE 3 considered a cost approach, a sales comparison approach and an income capitalization approach. He placed

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the most weight on the income approach, which was the lowest of the three value indicators. The reason given was that these types of properties sell based on their income stream.

6. RESPONDENT REPRESENTATIVE 3's cost approach used a cost per square foot for the self-storage buildings of \$\$\$\$ and for the shop building of \$\$\$\$\$. To this amount he added 6% for indirect costs and 10% for entrepreneurial profit. He indicated that his cost was the total cost to replace the structures including the foundations, permits, driveways and parking areas. He indicates that he had reviewed cost information provided by Petitioner. Petitioner provided bids to construct the steel storage buildings for \$\$\$\$ per square foot. RESPONDENT REPRESENTATIVE 3 indicated that the bids were just for the steel structure and did not include ancillary items like foundation costs, utilities, permits etc. After concluding the cost new of the improvements was \$\$\$\$\$, RESPONDENT REPRESENTATIVE 3 made a deduction for physical deterioration of 26%, resulting in a combined cost value for the subject properties of \$\$\$\$.

7. In the sales comparison approach RESPONDENT REPRESENTATIVE 3 considered three sales of properties that had self-storage units. These sales had occurred in 1996, 2000 and 2002. Two of the sales were located in CITY 1, while the third was in CITY 2. It was his conclusion from the sales approach that the value for the subject properties was a combined value of \$\$\$\$\$. He indicated that he did not include as a comparable Petitioner's purchase of the subject property, as the purchase had occurred too far prior to the lien date.

8. In the income approach RESPONDENT REPRESENTATIVE 3 considered the rental income and expenses from five other self-storage properties located in CITY 1. He acknowledged that due to the age of the older subject property units there would be some additional repair and maintenance costs. He states that he accounted for these extra costs by subtracting additional expenses from the income stream. The value he reached from this approach was \$\$\$\$\$. He did not consider the income approach to include any value for intangibles, pointing out that it was lower than the cost approach value. In his final reconciliation of values it

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was his conclusion that the combined value for the subject parcels was \$\$\$\$\$.

9. In considering the evidence in this matter the Commission notes that Petitioner presented no evidence, or fact witness. Petitioner's representative presented only arguments or conclusions without supporting the underlying factual elements. Respondent addressed Petitioner's arguments with its fact witness or appraisal and Petitioner submitted no evidence to rebut the responses. Although the appraisal submitted by Respondent in this matter was for a date one year prior to the lien date at issue, in light of the fact that no evidence had been submitted by Petitioner, and there was no indication of a significant change in value over the one year period, the Commission accepts the appraisal as supporting the value set by the County Board of Equalization for the tax year 2004.

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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (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 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

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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). In this matter Petitioner argued that there was error on the part of the County but provided no evidence to support the argument and submitted no evidence to support a sound evidentiary basis for a lower value.

DISCUSSION

At the hearing, Petitioner briefly presented five arguments or conclusions. All five contained to some degree factual elements. Unless uncontested, for Petitioner to prevail on these points, Petitioner would need to present testimony or evidence of the factual elements, mere allegation is not sufficient for Petitioner to prevail.

Petitioner's representative argued that basing the value on the income approach captured intangibles. Although, Petitioner's representative did not elaborate on this point, the income approach value is derived from estimates for the rents of the various storage and shop space units and the expenses attributable to maintaining and renting the spaces. Because these rental incomes and expenses are also the incomes and expenses of the business the argument may be that the value is capturing some good will. Intangible property is specifically exempt from property tax pursuant to Utah Code Sec. 59-2-102(26). However, the statute defines "intangible property" to be property that is capable of private ownership separate from intangible property. See Utah Code Sec. 59-2-102(18). Petitioner made an argument that Respondent's value captured some

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intangibles, but made no attempt to show what or how much. The Commission would note that the income approach is routinely considered in appraisals of property, especially rental properties. In this case the witness for Respondent argued that there could be no value for intangibles in his income approach, because it was, in fact, lower than the cost value. Whether or not Respondent's value contained a value for intangibles would be a question of fact upon which Petitioner has failed to meet the evidentiary burden.

A second argument offered by Petitioner was that an appraisal should be based on all three approaches to value. In this matter, Respondent's appraisal did consider all three approaches. The most weight was given to the income approach, but it was the lowest indicated value for the subject property. Petitioner also argued that Respondent should have considered the bid information that had been previously provided by Petitioner, which indicated a cost of \$\$\$\$ per square foot. Petitioner did not provide this bid information to the Commission during the hearing. Respondent countered that the bid information did not include all the actual costs to construct the improvements. Petitioner provided no reply to the response on this issue.

A fourth argument made by Petitioner was that Respondent should have considered the actual purchase price of the subject property. Petitioner did not provide the actual sale data and it is unclear when this sale occurred. Respondent's appraiser argued that the sale was too far prior to the lien date at issue to be relevant to the value. Petitioner did not counter with an appraisal or appraiser testimony on this point.

A fifth argument made by Petitioner was that Respondent should have deducted \$\$\$\$ in deferred maintenance from its value conclusion. Again this was presented as a conclusion without the evidence necessary to support this claim. Respondent countered this argument at the hearing. The appraiser for Respondent had considered the issue of deferred maintenance and made what he determined were the appropriate adjustments in his appraisal. Upon consideration of the evidence presented in this matter, Petitioner failed to meet its burden of proof.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the value for the subject parcels as was set by the County Assessor and upheld by the County Board of Equalization for the lien date January 1, 2004. It is so ordered.

DATED this _____ day of _____, 2006.

Jane Phan
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 _____, 2006.

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 Sec.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. Sec. 59-1-601 and 63-46b-13 et. seq.

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