

05-0528
Locally Assessed Property Tax
Signed 12/30/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER FROM INITIAL HEARING
)	
Petitioner,)	Appeal No. 05-0528
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally
BOARD OF EQUALIZATION OF)	Assessed
SALT LAKE COUNTY, UTAH,)	Tax Year: 2004
)	
Respondent.)	Judge: Rees

Presiding: Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Petitioner's Representative, and
PETITIONER REPRESENTATIVE 2, Appraiser
For Respondent: RESPONDENT REPRESENTATIVE 1, Appeals Manager, and
RESPONDENT REPRESENTATIVE 2, Appraiser, Assessor's
Office

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.

STATEMENT OF THE CASE

The subject property is a 2.17 acre commercial property with improvements that currently house a retail business, COMPANY A. This property was initially valued by the Assessor at \$\$\$\$\$. The Board of Equalization reduced the valuation to \$\$\$\$\$. Petitioner appealed the Board's decision.

This matter came before the Commission for an Initial Hearing on November 3, 2005.

The Petitioner initially claimed that the property should be valued to \$\$\$\$ (rounded). At hearing, Petitioner agreed that surplus land worth \$\$\$\$ should be included in the value of this property, thereby increasing Petitioner's estimate to \$\$\$\$.

APPLICABLE LAW

With regard to an appeal of the assessed value, Petitioner has the burden to establish that the market value of the subject property is other than that as determined by Respondent. Utah Admin. R. R861-1A-7(G). 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).

DISCUSSION

The subject property is a commercial property located at ADDRESS 1, which is a corner property on STREET 1 and the frontage road that runs on the east side of the (X). The site is 2.17 acres with a small 13,260 sq. ft. building. The building is currently used by COMPANY A, a (X) retailer, as retail/warehouse space. A portion of the surrounding lot is used for display of the retailer's products. The building is a Class C block building with brick veneer and it may have been designed or used for automotive repair or service. The parties agreed that the value of this property is in the land, not its improvements.

Petitioner prepared two appraisal reports. One is a standard commercial appraisal report that considers the income and sales approaches to this property as improved. The second is an "assumed vacant" appraisal intended to value the land as if were vacant on the assumption that the value of this property is in the land – not its commercial improvements. Respondent prepared an appraisal report based on the cost approach, the sales comparison approach and the income approach.

Sales approach

Petitioner's sales approach relies on the sales of five comparable properties. The sales range from 2001 to 2004. The appraiser made no time adjustment due to the stability of the market during that time. The comparables are located within a few blocks of (X), but are no closer to the subject than STREET 2. The appraiser stated that he used some sales from outside the immediate area due to the lack of comparables nearby.

The five comparables were adjusted by +/- 5-10% for various differences in features, such as location, building size, construction characteristics and site characteristics. The adjusted prices per sq. ft. ranged from \$\$\$\$\$ to \$\$\$\$\$. The appraiser testified that comparables #1 and #4 are new buildings, and these comparables adjusted to \$\$\$\$\$ and \$\$\$\$\$ represent the upper limit of the price range for this property. The appraiser used \$\$\$\$\$ per sq. ft. to calculate a value of \$\$\$\$\$ (rounded) for the subject property. At the hearing, the appraiser agreed that \$\$\$\$\$ for surplus property should be added to this value, resulting in a value of approximately \$\$\$\$\$.

The Respondent used four comparable sales from 2001 and 2002 and located in areas quite remote from the subject. Respondent's grid compares land to building ratio, site size, age and condition of improvements, rentable area and price per square foot. These comparables established a price range of \$\$\$\$\$ / sq. ft. to \$\$\$\$\$ / sq. ft. The Respondent used \$\$\$\$\$ / sq. ft. to arrive at an indicated value of \$\$\$\$\$. Adding on the excess land at \$\$\$\$\$, the total value indicated is \$\$\$\$\$ (rounded).

In spite of using different comparables and different comparison approaches, the parties arrived at a similar value of, say, \$\$\$\$\$ when using the sales approach.

Income Approach

Petitioner's income approach used rents from five comparables and analyzed the subject on the basis of triple net expenses. Four of the comparables are within a few blocks of the (X)

corridor. One comparable is quite remote from the subject on STREET 3 and STREET 4. After adjusting +/- 5-10% for differences in location, size, and other characteristics, the appraiser calculated the PGI of the subject to be \$\$\$\$ per sq. ft. Using a vacancy rate of 10% of PGI, an operating expense of 10% of EGI, and a %%% cap rate, the appraiser concluded that the property value, based on the income approach, is \$\$\$\$\$. At the hearing, the appraiser agreed that \$\$\$\$ for surplus property should be added to this value resulting in \$\$\$\$\$.

Respondent's income approach is based on four comparables. One is located within a few blocks of the (X). The other three are located at the same address, ADDRESS 2. Respondent's comparable grid indicates differences in land-to-building ratio, rentable area, age and condition of the improvements and size of the site. Respondent used a %%% cap rate, a 5% vacancy rate and a lease rate of \$\$\$\$\$, then added the value of the excess land to arrive at an indicated value of \$\$\$\$\$ (rounded).

Cost Approach

Petitioner did not prepare a cost approach analysis, but the Respondent did. Respondent's replacement cost information is based on Marshall-Swift data and the land value is based on five comparable land sales. The dates of the comparable sales range from July 2001 to July 2005. The properties range in size from .45 acre to 6.05 acre (at hearing, it was pointed out that the 6.05 acre was sold together with another parcel and together the totaled 7.43 acre). The price/sq. ft. ranges from \$\$\$\$\$/sq. ft. to \$\$\$\$\$/sq. ft. Respondent used \$\$\$\$\$/sq. ft. to arrive at \$\$\$\$\$/acre or \$\$\$\$\$ for the subject property site value. Respondent calculated the improvements at \$\$\$\$\$. Together, the Respondent's cost approach indicates a value of \$\$\$\$\$.

Valuing the Land as Unimproved

Both parties agreed that the value of this property is in the land, due to building to land ratio and due to the fact that the land sales may indicate the land may be more valuable without its

current improvements or, alternatively, with additions to the existing improvements.

Petitioner's appraiser prepared a separate "As Assumed Vacant" appraisal report that indicates a value of \$\$\$\$\$. The appraisal is based on six land sales. The date of the sales range from May 2002 to March 2004 and because the appraiser saw the market as stable in that period, he made no time adjustments. The site sizes range from .78 acre to 3.307 acre. The unadjusted sales prices range from \$\$\$\$\$/sq. ft. to \$\$\$\$\$/sq. ft. The appraiser made 5-10% adjustments for location, size, and access and calculated a range of adjusted sales prices from \$\$\$\$\$ to \$\$\$\$\$. The appraiser used \$\$\$\$\$/sq. ft. to value the land at \$\$\$\$\$. The appraiser estimated demolition costs at about \$\$\$\$\$, reducing the value to \$\$\$\$\$.

Respondent's land value has already been discussed as part of the cost approach described above. To summarize, Respondent's comparables yield an unadjusted price range of \$\$\$\$\$ to \$\$\$\$\$. Respondent's appraiser did not make specific adjustments to the comparables. Instead, he compared the comparables to the subject and made a judgment as to whether the comparables were generally superior or inferior to the subject property. The appraiser determined that Respondent's comparable #5 is most similar to the subject and that it also represented the mid-range price point. Using \$\$\$\$\$/sq. ft., the appraiser calculated the value of the land to be \$\$\$\$\$.

Because the differences of opinion about the land value seem to stem primarily from the choice of comparables, further discussion of the comparables is warranted.

Petitioner's land sale #1:

This 3.307 acre lot is located at ADDRESS 3. Respondent pointed out that this lot is zoned for agricultural use. Petitioner countered that COMPANY B purchased the lot and must have purchased it for commercial use. Respondent pointed out that the land may remain in agricultural use for years until it is developed. That is true. COMPANY B may hold the land for future development or resale. Moreover, there is no evidence as to how COMPANY B intends to

use this property. It is possible that COMPANY B's use of the property for, say, high powered transmission facilities, could coexist with continued agricultural uses. In any event, this sale is not directly comparable to the subject property, which is zoned for commercial uses.

Petitioner's land sale #2:

This .96 acre of land is located at ADDRESS 4. Respondent's witness stated that he was unable to locate this parcel of land. It appeared that this parcel is part of a larger land site purchased for development as a condominium site. Petitioner's appraiser stated that if that is so, this sale should be adjusted upward for configuration.

Respondent's witness also challenged the 10% adjustment made for this comparable, given that this site is on STREET 5. In contrast, the subject property is on the frontage road with good visual exposure to the (X), but without comparable access. Petitioner's appraiser admitted that the location adjustment of 10% should probably be as high as 20%, but stated that he has not seen paired sales data to support that.

The most obvious weakness in this comparable is the possibility that it was purchased as part of a bulk sale for use in a condominium project and that Petitioner's appraiser willingly admitted that additional adjustments may be required. Therefore, this sale is unreliable as evidence of the value of the subject property.

Petitioner's land sale #3

This property is 1.56 acres of commercial property located at ADDRESS 5. Respondent took issue with Petitioner's adjustments. This property sits at a "T" intersection rather than a full intersection, which, according to Respondent, is inferior to the subject and requires an upward, rather than downward adjustment. Petitioner's appraiser argued that this property is not exposed to the same traffic load as the subject property, so he resisted Petitioner's assertion that an upward adjustment is due. Without substantial evidence to support the Respondent's position on this issue,

we accept the professional judgement of Petitioner's appraiser on this point. The property sold for \$\$\$\$\$/sq. ft. Petitioner's appraiser adjusted the price to \$\$\$\$\$.

Petitioner's land sale #4

There was no particular challenge to this comparable. This property is a 1.4 acre lot at ADDRESS 6. The appraiser made no adjustments to this comparable, indicating that the appraiser considers this comparable to be the best indication of the value of the subject property. The sales price was \$\$\$\$\$/sq. ft.

Petitioner's land sale #5

Sale #5 is a .78 acre commercial property at ADDRESS 7. The appraiser adjusted this property -10% for location and -5% for size. Respondent stated that a comparable on STREET 5 should be adjusted for its superior access, which Petitioner's appraiser did not do. That may be true, but Respondent did not back that assertion up with evidence of an appropriate adjustment. Therefore, we give deference to the appraiser's professional judgement. The adjusted price is \$\$\$\$\$/sq. ft.

Petitioner's land sale #6

This land is located at ADDRESS 8 (lot 6 of (X)). The appraiser described this lot as a rectangular parcel consisting of 1.92 acres. It sold in 2003 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. Respondent produced evidence to show that this parcel is a flag lot, which has no frontage and its only access is through a long narrow driveway area. Furthermore, this parcel sold together with two other parcels in a bulk sale. Petitioner's appraiser remarked that, on the basis of that information, he would adjust the price by +10-20%. The appraiser stated that the adjustment could raise his proposed value from \$\$\$\$\$ to \$\$\$\$\$, but difference is inconsequential. This is another sale that is not directly comparable to the subject.

For purposes of this decision, we find that Petitioner's comparables #1, #2 and #6 are

either unreliable as indicators of the value of the subject property. Comparables #3, #4 and #5 yield an adjusted price range from \$\$\$\$\$ to \$\$\$\$\$. We note that the appraiser gave weight to all of the comparables, but he also stated that #4 required no adjustment at all.

Respondent's land sales

Respondent's appraiser took a different approach to comparing land sales. Five comparables were selected, then ranked them as overall superior or inferior to the subject. The unadjusted sales prices range from \$\$\$\$\$/sq. ft. to \$\$\$\$\$/sq. ft.

Respondent's land sale #1

This .45 acre property is located at ADDRESS 9 and sold in 2002 for \$\$\$\$\$/sq. ft. The appraiser identified this sale as overall superior to the subject, based on the comparable's superior location, which has access from STREET 6.

Respondent's land sale #2

This 3.66 acre property sits at ADDRESS 10 and sold in 2001 \$\$\$\$\$/sq. ft. The appraiser identified this sale as overall superior to the subject due to its zoning and shape.

Respondent's land sale #3

Comparable #3 is located at ADDRESS 11. The appraiser indicated that this sale is overall inferior to the subject because part of the parcel includes a hillside that diminishes the property's utility. However, the overall acreage is 6.02 acres, nearly 3 times the size of the subject. No evidence was presented as to the amount of acreage that is actually impaired by topography, so it is difficult to compare the utility of this parcel to the subject. This lot is very close to the subject, but appears to have inferior access. It sold in 2005, under what the appraiser concluded were superior market conditions for \$\$\$\$\$.

Respondent's land sales #4 and #5

Although comparable #4 and #5 have separate parcel numbers, they apparently share a

street address of ADDRESS 12. The aerial photo provided by the County and discussions in the hearing suggest that comparable #4 was sold in conjunction with the sale of other adjoining land, so the reliability of this comparable is not certain. Comparable #5 also abuts the parcels that were purchased in bulk with comparable #4, but has a separate purchase date. For purposes our analysis, we disregard comparable #4 and accept #5, which sold for \$\$\$\$\$/sq. ft.

Respondent's appraiser used a price of \$\$\$\$\$/sq. ft. to value the subject property. That price point is below the sales prices of the comparables that the appraiser found to be overall superior.

It appears that the appraisers found sales that represent widely differing markets. The Respondent drew comparables from the same area as the subject, although they all have very superior access and exposure, with the exception of comparable #3. Respondent's appraiser compensated for the superiority of these parcels by selecting a price point below these comparables at \$\$\$\$\$/sq. ft. The question, of course, is whether that price point is fairly representative of the subject property's value.

Petitioner had three comparables that appear reliable, #3, #4 and #5. None of these is in the area of the subject. Petitioner's appraiser is of the opinion that #3 and #5 are superior to the subject, but provided no solid support for that opinion. It is possible that all three of these properties, given the sales prices of properties in the area and how remote Petitioner's comparables are from the subject, represent a different market altogether. In fact, the actual sales prices of properties nearest to the subject and closest to the lien date (Respondent's comparables) are considerably higher than the actual prices of the comparables that are outside that area (Petitioner's comparables).

Because the parties agreed that the value of the property is in the land, we give no weight to their determinations of the value of the property as improved. The appraisers used different

approaches to evaluate their land sales and to arrive at their estimates of value. Overall, we find the appraisal submitted by the Respondent, which used comparables in the area of the subject property, to be the best evidence of value. In the absence of evidence to the contrary, we defer to the appraiser's professional opinion that the price point of \$\$\$\$ is a reasonable estimate of value.

DECISION AND ORDER

On the evidence and testimony presented, the Commission finds the fair market value of the subject property to be \$\$\$\$ as of the 2004 lien date.

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.

Irene Rees, 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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