

05-0644  
Locally Assessed Property Tax  
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No.    05-0644
v.	)	
	)	Parcel No      #####-1
BOARD OF EQUALIZATION OF	)	Tax Type:      Property Tax/Locally Assessed
SALT LAKE COUNTY,	)	Tax Year:      2004
STATE OF UTAH,	)	
	)	Judge:        Chapman
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 order, 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:  
    Kerry R. Chapman, Administrative Law Judge

Appearances:  
    For Petitioner:    PETITIONER REPRESENTATIVE, Representative  
    For Respondent:    RESPONDENT REPRESENTATIVE 1, Salt Lake County Assessor’s Office  
                        RESPONDENT REPRESENTATIVE 2, Salt Lake County Assessor’s Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on November 29, 2005.

Background. The Petitioner is appealing the market value of the subject property as set by the Salt Lake County Board of Equalization (“County BOE”) for the 2004 tax year. The subject property is a commercial office/warehouse located at ADDRESS in Salt Lake County, Utah. The subject property is comprised of 1.45 acres of land and a 16,758 square foot office/warehouse with ##### bays that was built in

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1979. In December 2003, the entire property was leased to one tenant on a modified gross lease at \$\$\$\$ per month (which equates to \$\$\$\$ per square foot on a yearly basis and \$\$\$\$ per square foot on a monthly basis). The Petitioner proffers testimony that, under this modified gross lease, the owner pays all expenses relating to the subject property except for electricity. The County did not refute this testimony. The County did proffer testimony that the lessee had subleased a portion of the building to another tenant in 2005, but neither party provided information concerning the terms of the sublease.

The Salt Lake County's Assessor's Office originally assessed the subject property at \$\$\$\$\$, which the County BOE sustained. Although not appealed, both parties agree that the subject property is one of two properties that comprise an economic unit. The other property, Parcel No. #####-2, is a 0.19-acre lot adjacent to the subject property, which both parties confirm was assessed at \$\$\$\$ for the 2004 tax year. When the assessed values for both parcels are totaled, the economic unit (the 16,758 square foot building and 1.64 acres of land) is assessed at \$\$\$\$\$, which equates to a value of \$\$\$\$ per square foot.

The Petitioner contends that the value of the economic unit is \$\$\$\$ (\$\$\$\$ per square foot) and, after subtracting the \$\$\$\$ value of the associated parcel, requests that the Commission lower the value of the subject parcel to \$\$\$\$\$. The County contends that the value of the economic unit is \$\$\$\$ (\$\$\$\$ per square foot) and, after subtracting the \$\$\$\$ value of the associated parcel, requests that the Commission raise the value of the subject parcel to \$\$\$\$\$. Because both parties are requesting the Commission to change the County BOE value, either party must show that the County BOE value is incorrect and provide a sound evidentiary basis for the change it seeks in order to succeed.

County Evidence to Raise Value. The County proffers an appraisal prepared by RESPONDENT REPRESENTATIVE 2 as evidence to show that the value should be raised. RESPONDENT REPRESENTATIVE 2 estimated the value of the economic unit at \$\$\$\$ using a cost approach, \$\$\$\$ using

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a market approach, and \$\$\$\$ using an income approach. In correlating a value of \$\$\$\$ for the subject, he gave “some weight” to the cost approach, “considerable weight” to the market approach, and the “most weight” to the income approach. Although RESPONDENT REPRESENTATIVE 2 does not include in his appraisal how a he correlated a value of \$\$\$\$\$, he proffered at the Initial Hearing that the income approach is the most reliable method to determine the value of a property such as the subject.

One month prior to the lien date, the subject leased at \$\$\$\$ per square foot on a modified gross lease under which the owner pays all expenses except for electricity. RESPONDENT REPRESENTATIVE 2 did not prepare an income analysis of the actual lease, but “converted” the actual lease to a triple net lease in an attempt to show that it is a “below market” lease. RESPONDENT REPRESENTATIVE 2 lists the expenses that should be accounted for in converting the subject’s modified gross lease to a triple net lease on page 14 of his appraisal. The County admitted at the hearing that RESPONDENT REPRESENTATIVE 2 incorrectly calculated the property tax expense and that all of his lease conversions in the appraisal, including the conversion of the subject’s actual lease, are incorrect as a result. However, it appears that the error only relates to the property tax expense portion of the conversion.

RESPONDENT REPRESENTATIVE 2 continues to argue, nevertheless, that the subject’s actual lease is “below market.” However, the evidence he compiled in his appraisal suggests otherwise. First, he states that the actual lease was \$\$\$\$ per square foot, without explaining how he computed this figure. The Petitioner proffered testimony that the actual lease rate is \$\$\$\$ per month, which was not refuted. When this lease rate is converted to a yearly amount per square foot (based on a 16,758 square foot building), the result is \$\$\$\$ per square foot, not \$\$\$\$ per square foot, as used by RESPONDENT REPRESENTATIVE 2.

A modified gross lease rate of \$\$\$\$ per square foot for the subject is supported by two of RESPONDENT REPRESENTATIVE 2’s four lease comparables, as compiled on page 15 of his report.

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Lease comparables #1 and #4 rented at rates of \$\$\$\$ and \$\$\$\$ per square foot, respectively, on modified gross leases. These two leases are nearly identical to the rate at which the subject leased in December 2003. RESPONDENT REPRESENTATIVE 2 also explains in his appraisal that of all the comparables he used, the only lease that is equivalent to the subject is comparable #1, which is a modified gross lease with a lease rate almost identical to the subject's. RESPONDENT REPRESENTATIVE 2's statement appears supported by the fact that comparables #2 and #3 are in a building that is 96,000 square feet in total size, almost six times the size of the subject. For these reason, this evidence does not convince the Commission that the actual lease is "below market."

RESPONDENT REPRESENTATIVE 2's own information convinces the Commission that the subject's actual lease is a "market" lease. In addition, RESPONDENT REPRESENTATIVE 2 has provided a means to estimate the expenses associated with the subject's modified gross lease on page 14 of his appraisal. Accordingly, the Commission can apply the actual lease and expenses, as estimated by RESPONDENT REPRESENTATIVE 2, to his income approach formula, as found on page 17 of his appraisal, to estimate the value of the subject. On page 14 of his appraisal, RESPONDENT REPRESENTATIVE 2 estimates the expenses associated with the subject's actual modified lease to be \$\$\$\$ per square foot (excluding the erroneous property tax expense). An expense rate of \$\$\$\$ per square foot for the 16,758 square foot subject building would result in estimated expenses of \$\$\$\$\$, excluding property taxes.

If the actual lease rate is inserted into RESPONDENT REPRESENTATIVE 2's income approach formula (using a 10% vacancy rate, \$\$\$\$ of expenses excluding property taxes, and a capitalization rate of %%% to which the 1.59% property tax rate is added), the actual modified gross lease would show a value of \$\$\$\$ for the economic unit, which is \$\$\$\$ lower (2.6%) than the value established by the County BOE. Accordingly, using the actual lease rate, which appears similar to other market leases, RESPONDENT

REPRESENTATIVE 2's estimate of modified gross lease expenses and the other components of his income approach formula, the resulting value of the subject economic unit would be estimated at \$\$\$\$\$.<sup>1</sup>

An economic unit value of \$\$\$\$\$ would equate to a value of \$\$\$\$\$ per square foot for the subject. Although none of RESPONDENT REPRESENTATIVE 2's four comparables sales sold for less than \$\$\$\$\$ per square foot, the Commission is concerned that none of the comparables are within 50 blocks of the subject and almost all are near the STREET 1 to STREET 2 area of CITY. In addition, the Petitioner has provided comparables of closer multi-tenant office/warehouses that sell for less than \$\$\$\$\$ per square foot.

Furthermore, the Petitioner has shown that the office percentages that RESPONDENT REPRESENTATIVE 2 included and adjusted for in his market approach are different, sometimes extremely so, from those found in county records. For example, RESPONDENT REPRESENTATIVE 2 estimated that his sales comparable #3 has 19% office space. County records indicate that the office space occupies more than 50% of the building. RESPONDENT REPRESENTATIVE 2 acknowledged that he estimated office percentages without entering his comparables or measuring their respective office spaces. Apparently, he did not verify his estimates against the County's own records, either. For these reasons, the Commission is not convinced that RESPONDENT REPRESENTATIVE 2's sales comparables are conclusive of the subject's value and finds his market approach and analysis clearly insufficient to overcome the \$\$\$\$\$ income approach estimate of value resulting from the subject's actual lease. For these reasons, the Commission finds that the County has not provided a sound evidentiary basis to have the subject property's value raised.

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<sup>1</sup> At the hearing, the County quickly tried to correct the property tax conversion error and reconvert the subject's modified gross lease to a triple net lease. It arrived at a converted triple net rate of \$\$\$\$\$ per square foot. Applying a \$\$\$\$\$ per square foot triple net rate to RESPONDENT REPRESENTATIVE 2's income approach results in income analysis estimate of \$\$\$\$\$ for the economic unit. However, the Commission is not convinced that the hasty revision has produced a "converted" lease rate that is any more accurate than the erroneous one in the appraisal. Accordingly, a value of \$\$\$\$\$ is not convincing.

Petitioner's Case to Lower Value. For the Petitioner, PETITIONER REPRESENTATIVE prepared both an income approach and a market sales approach to value. For her income approach, PETITIONER REPRESENTATIVE submitted 10 comparable leases with rates ranging from \$\$\$\$ per square on a triple net lease to \$\$\$\$ per square foot on a modified gross lease. After compiling these leases, she concluded that the subject would lease at \$\$\$\$ on a triple net lease. Using this rental rate, an 11% vacancy rate, a 6% operating expense rate, a 3% reserves expense rate and a %%%% capitalization rate, she concluded that the subject economic unit has a value of \$\$\$\$\$, which equates to \$\$\$\$ per square foot. For her market sales approach, PETITIONER REPRESENTATIVE submitted nine comparables that sold at prices ranging from \$\$\$\$ to \$\$\$\$ per square foot. She adjusted these comparables and concluded that the subject has a value of \$\$\$\$ per square foot, which equates to \$\$\$\$ for the economic unit. She asks that the Commission find the value of the economic unit to be \$\$\$\$ on this evidence and, as a result, reduce the value of the subject property to \$\$\$\$.

For her income approach, PETITIONER REPRESENTATIVE compiled a number of leases to show that the subject's actual \$\$\$\$ per square foot modified gross lease is "above market." Although most of the leases were at rates below that at which the subject leased, two of her comparables leased for \$\$\$\$ per square foot on a modified gross basis, nearly the identical rate at which the subject leased. In addition, the County's lease comparables, as discussed earlier, convince the Commission that the actual lease was a "market" lease. Accordingly, the Commission is not convinced that the actual lease is "above" market and that a lower lease rate should be used in an income approach.

Nor does PETITIONER REPRESENTATIVE provide any of the actual expenses incurred by the owner of the subject property under the modified gross lease that is in place. For these reasons, the Commission finds that the best estimate of expenses incurred under the actual modified gross lease are those

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estimated by RESPONDENT REPRESENTATIVE 2 in his appraisal (once his property tax expense is corrected), as RESPONDENT REPRESENTATIVE 2 is a certified registered appraiser.

The other differences between the parties' income approaches involve the vacancy rates and the capitalization rates that RESPONDENT REPRESENTATIVE 2 and PETITIONER REPRESENTATIVE used. PETITIONER REPRESENTATIVE used an 11% vacancy rate in her analysis, while the RESPONDENT REPRESENTATIVE 2 used a 10% vacancy rate. PETITIONER REPRESENTATIVE used a %%% capitalization rate, while the RESPONDENT REPRESENTATIVE 2 used a %%% capitalization rate.

To support her vacancy rate, PETITIONER REPRESENTATIVE provided information from a 2005 Commercial Real Estate Symposium showing that the First Quarter 2004 "available" rate was 11.65% while the "vacant" rate was 9.57%. Neither term is explained in this evidence. The Commission notes that the income approach employs a "vacancy rate" in the analysis to determine value, not an "availability rate." Until information is provided to show the "available" rate is the vacancy rate and the "vacant" rate is not, the Commission is not convinced that PETITIONER REPRESENTATIVE'S 11% vacancy rate is a better estimate of vacancy than the 10% rate that RESPONDENT REPRESENTATIVE 2 used. PETITIONER REPRESENTATIVE'S own information seems to corroborate RESPONDENT REPRESENTATIVE 2' use of a 10% vacancy rate.

To support her %%% capitalization rate, PETITIONER REPRESENTATIVE provided eight capitalization rate comparables that were purchased from commercial sellers. She did not examine the sales themselves or calculate the capitalization rates. All but one of these rates ranged from %%% to %%%, with the majority under %%%. The two buildings closest in size and age to the subject had capitalization rates of %%% (a 2001 sale) and %%% (a 2004 sale), respectively. She also submitted

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information from a 2003 Commercial Real Estate Symposium showing the 2002 capitalization rate for industrial properties to range between 8% and 10%.

The County showed that by 2004, the same symposium estimated that 2003 capitalization rates for industrial properties had dropped since 2002 to a range between 7% and 9%. RESPONDENT REPRESENTATIVE 2 also included four capitalization comparables in his appraisal that ranged between 8% and 10%, from which he estimated that the subject property should have a capitalization rate of 9%. PETITIONER REPRESENTATIVE proffered evidence to show that there is no address in County records for one of RESPONDENT REPRESENTATIVE 2' comparables and that the three comparables with capitalization rates between 8% and 10% may be better located and newer than the subject.

By 2004, the capitalization rate for industrial buildings appeared to have dropped, as evidence by the Commercial Real Estate Symposium information, which estimated capitalization 2003 rates to fall between 7% and 9%. Although PETITIONER REPRESENTATIVE'S own lease information shows that the subject property is able to generate higher rents than the other comparables she submitted, she concluded that the subject building would sell at a price that would produce a capitalization rate near the top of the range. Her conclusion seems contradictory. The Commission is not convinced that she is correct given the information provided by both parties and finds that RESPONDENT REPRESENTATIVE 2's estimate of a 9% capitalization rate is more convincing. For these reasons, PETITIONER REPRESENTATIVE has provided no convincing income approach information that would challenge the income approach value of \$\$\$\$ for the economic unit, as estimated earlier in the discussion of RESPONDENT REPRESENTATIVE 2's appraisal.

Concerning PETITIONER REPRESENTATIVE's market approach, only one of her



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comparable sales supports the current County BOE value of \$\$\$\$ per square foot for the subject property. Although her comparables appear closer in location, in general, to the subject property, than those used by RESPONDENT REPRESENTATIVE 2, the County has submitted pictures that call her use of them as comparables into question, unless upward adjustments are made. For this reason, the Commission does not find her comparable sales and adjustments convincing and certainly insufficient to overcome the value produced by the income approach using the actual lease in place. For these reasons, the Commission finds that the Petitioner has not provided a sound evidentiary basis for the Commission to reduce the value sustained by the County BOE.

Summary. From the information provided by the two parties, the Commission would be led to believe that office/warehouses capable of two or more tenants only sell within two ranges of values, one that ranges between \$\$\$\$ to \$\$\$\$ per square foot and another that ranges between \$\$\$\$ and \$\$\$\$ per square foot. Perhaps if those properties that sold between \$\$\$\$ and \$\$\$\$ per square foot were also available for examination, it could be better determined where in the market the subject property should be valued using a market approach.

Accordingly, based on the evidence and testimony submitted at the Initial Hearing, the Commission finds that the value of the economic unit is \$\$\$\$\$, as derived using the income approach and the actual lease in place, as discussed earlier. When the \$\$\$\$ value of Parcel No. #####-2 is subtracted from the total unit value of \$\$\$\$\$, the fair market value of the subject property, Parcel No. #####-1, is \$\$\$\$\$. Because this is less than 2.6% different from the value set by the County BOE, the Commission finds the County BOE value of \$\$\$\$ appears to be a reasonable estimate of the subject's value. For these reasons, the Commission sustains the County BOE value and denies both the Petitioner's and the County's requests to have the value changed.

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. (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 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 have a value changed in a real property tax dispute, a party 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). As explained earlier, the Commission finds that neither party has submitted sufficient a sound evidentiary basis to show that the County BOE’s value of \$\$\$\$ should be

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changed for the 2004 tax year.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of Parcel No. #####-1 should be sustained at \$\$\$\$\$, as set by the County BOE, for 2004 property tax purposes. 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.

\_\_\_\_\_  
Kerry R. Chapman  
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.

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Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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