

05-0730
Locally Assessed Property Tax
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0730
v.)		
	)	Parcel No.	#####
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF SALT LAKE COUNTY,	)	Tax Year:	2004
STATE OF UTAH,)		
	)	Judge:	Chapman
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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE (representative)
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Salt Lake County Assessor's Office
RESPONDENT REPRESENTATIVE 2, from the 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 November 15, 2005.

At issue is the fair market value of the subject property as of January 1, 2004. The subject property is a commercial property that is comprised of 1.36 acres of land upon which a service garage is located. The parcel is located at ADDRESS in CITY, Utah. The building consists of an #####-bay service

garage with 18' clearance that is 4,484 square feet in size and a two-story office area that is 1,036 square feet in size, for a total square footage of 5,520 square feet (19% office). The improvements were built in 1997. For the 2004 tax year, the County assessed the property at \$\$\$\$\$, which the County BOE sustained.

Petitioner Approach. The Petitioner submitted 10 land sales, adjusted them, and concluded that the subject has a total land value of \$\$\$\$\$ per square foot, which equates to \$\$\$\$\$ for the entire 1.36 acres. The Petitioner also estimates that 0.90 acres of the parcel is not associated with the commercial business and is, thus, excess land that must be separately valued. Because the majority of the excess land, in the Petitioner's opinion, is backage property, the Petitioner estimates the 0.90 acres to have a value of \$\$\$\$\$ per square foot, which equates to \$\$\$\$\$ for the excess land.

For the commercial business (i.e., the service garage and remaining 0.46 acres), the Petitioner submits two approaches to value: 1) a market approach, in which comparable sales are adjusted to determine a value for the subject business; and 2) an income approach, in which comparable leases are adjusted to determine the business's PGI, which is used in an income analysis to determine the business's value. For the market approach, the Petitioner proffers nine comparable sales of commercial businesses, adjusts them, and concludes that the subject business has a value of \$\$\$\$\$ per square foot. At 5,520 square feet, the business was estimated to be worth \$\$\$\$\$, which when added to the \$\$\$\$\$ excess land value, results in a total value for the parcel of \$\$\$\$\$.

For the income approach, the Petitioner submitted 10 comparable leases of business properties and concluded that the subject would lease for \$\$\$\$\$ per square foot (triple net lease), which when applied to the building's 5,520 square feet, results in a PGI of \$\$\$\$\$. The Petitioner then applied an 8% vacancy rate, a 6% expense rate, a 3% reserves rate, and a %%% capitalization rate to the PGI to derive a value of \$\$\$\$\$ for the business. Adding the excess land value of \$\$\$\$\$ results in a total value of \$\$\$\$\$ for the subject

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property. The Petitioner concludes that the fair market value of the subject property is \$\$\$\$ and asks the Commission to reduce the subject's value to this amount.

County Approach. The County submits an appraisal prepared by RESPONDENT REPRESENTATIVE 2, in which she estimates the subject property to have a value of \$\$\$\$ as of the lien date. The County determined the front 0.54 acres to be associated with the business and the back 0.82 acres to be excess land. Using four land sale comparables and adjusting them, the County estimated the front 0.54 acres to have a value of \$\$\$\$\$, or approximately \$\$\$\$\$ per square foot. The County then concluded that backage square footage was worth 50% of frontage, estimating the 0.82 acres of backage square footage to have a value of \$\$\$\$\$ per square foot, which equates to approximately \$\$\$\$\$. In total, the County estimated the parcel to have a land value of \$\$\$\$\$, or \$\$\$\$\$ per square foot.

The County proffered three approaches to value in its appraisal: a cost approach, a market approach, and an income approach. For the cost approach, the County estimated the replacement cost of the subject building to be \$\$\$\$\$. Adding the building value to the \$\$\$\$\$ land value, the County estimated that the cost approach derived a value of \$\$\$\$\$ for the subject property. For the market approach, the County provided four comparable sales, adjusted them, and estimated the subject business to have a value of \$\$\$\$\$, or \$\$\$\$\$ per square foot. Although the County had previously determined the value of the excess land to be \$\$\$\$\$, the County only added an excess land value of \$\$\$\$\$ to the \$\$\$\$\$ business value, thereby estimating a total value of \$\$\$\$\$ through the market approach.

For the income approach, the County used four lease comparables, from which it concluded that the subject business would rent for \$\$\$\$\$ per square foot (triple net) for a PGI of \$\$\$\$\$. Using an 8% vacancy rate, a 6% expense rate (3% operating and 3% reserves), and a capitalization rate of %%%%, the County concluded that the subject business would have a value of \$\$\$\$\$. Although the County had previously

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determined the value of the excess land to be \$\$\$\$\$, the County only added an excess land value of \$\$\$\$\$ to the \$\$\$\$\$ business value, thereby estimating a total value of \$\$\$\$\$ through the income approach.

The County correlated its income approach value of \$\$\$\$\$, its market approach value of \$\$\$\$\$, and its income approach value of \$\$\$\$\$ and concluded that the subject has a value of \$\$\$\$\$ as of the lien date. The County asks the Commission to raise the value of the subject property to \$\$\$\$\$.

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 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), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

In this case, both parties are asking the Commission to change the value placed upon the subject property by the County BOE. The Petitioner is asking that the value be lowered, while the County is asking that the value be raised. For either party to succeed, it must demonstrate that the County BOE's value contains error and provide the Commission with a sound evidentiary basis to change that value.

Both parties agree that the service garage commercial enterprise does not utilize or require the full 1.36 acres of land associated with the parcel. The County estimates that 0.82 acres of the parcel is excess land, while the Petitioner estimates that 0.90 acres is excess land. Based on the parties' respective descriptions of how they determined the excess land and the configuration of the parcel, the Commission finds that the County's estimate of 0.82 acres of excess land is more reasonable than the Petitioner's estimate.

Land. The value of the excess land must be determined and added to the value derived for the commercial enterprise through a market or income approach in order to determine the total market value of the parcel. The land is an L-shaped parcel with the narrowest portion, on which the service garage is located, located on STREET 1 and the wider portion, the excess land, being interior acreage.

The Petitioner's nine land sales sold between \$\$\$\$\$ and \$\$\$\$\$ per square foot, which were adjusted to estimate a value of \$\$\$\$\$ per square foot for the entire parcel. PETITIONER REPRESENTATIVE then concluded that the 0.90-acre excess land would have a value of \$\$\$\$\$ per square foot. Although the Petitioner includes land sales that sold from 2000 to 2005, few, if any, of the sales appear to be located in as desirable a location as the subject or to have as high a traffic flow as the subject.

The County proffers four land sales, which all sold between 1997 and 2002 for prices between \$\$\$\$\$ and \$\$\$\$\$ per square foot. Although the subject is located on STREET 1, a street with relatively high traffic flow, County comparable #4 is on STREET 2 and appears to show a different market from the rest of

the County's sales, particularly when its adjusted values are compared to that of the other three. The Commission is concerned that use of this comparable may result in an overestimation of the subject's value. The other three comparables, however, appear to be in more similar areas as the subject. If the first three comparables alone are considered with equal weight, the resulting land value for the front 0.54 acres is \$\$\$\$\$, or \$\$\$\$\$. The County estimates that the excess backage portion would have one-half the value of the front portion on the parcel on which the business is located. If one-half of \$\$\$\$\$, or \$\$\$\$\$, is applied to the 0.82 acres of excess land, the resulting excess land value is \$\$\$\$\$. Adding these two values together would result in a total land value of \$\$\$\$\$. Using these land values in the remainder of the County's appraisal would result in a cost approach of \$\$\$\$\$, a market approach of \$\$\$\$\$, and an income approach of \$\$\$\$\$. This concern alone would suggest that the County has not convincingly shown that the value of the subject property should be as high as \$\$\$\$\$.

Market Approaches. The Petitioner's nine comparable sales sold between \$\$\$\$\$ and \$\$\$\$\$ per square foot. Most of the comparables do not appear to be in as desirable a location as the subject, and the Petitioner did not reasonably adjust for this factor in estimating a value of \$\$\$\$\$ per square foot for the subject business. Furthermore, the subject was only seven years old as of the lien date and has #####service bays. All of the comparables were built prior to 1981 and most have only ##### to ##### bays.

The County's four comparable sales sold between \$\$\$\$\$ and \$\$\$\$\$ per square foot, which it adjusted to prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The Commission is concerned that Comparable #4's sales price may be an anomaly because its adjusted price of \$\$\$\$\$ per square foot is 50% higher than the County's next highest adjusted value and because the purchaser indicated he paid too much for the property, which had not been on the market for sale when he bought it. If this sale is removed from the analysis and the other three comparables are given equal weight, the estimated price per square foot for the

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business subject property would be \$\$\$\$\$ per square foot, which when applied to the 5,520 square feet would show a value of \$\$\$\$\$. Adding the \$\$\$\$\$ in excess land value determined earlier would result in a market value of \$\$\$\$\$.

However, even this revised market approach depends on the use of County comparable #1, which sold for \$\$\$\$\$ per square foot and adjusted to a price of \$\$\$\$\$ per square foot for the subject. Without question, this comparable appears most similar to the subject in location, number of bays, and appearance when compared to any comparable submitted by either party. However, it sold for \$\$\$\$\$ for 6,832 square feet of business space, yet leases for \$\$\$\$\$ per square foot on a modified gross lease (as shown on the County's lease information). \$\$\$\$\$ times 6,832 square feet would give a PGI of \$\$\$\$\$. If the County's income approach of an 8% vacancy rate, a 6% expense rate (even though the modified gross lease should result in a higher rate), and a %%% capitalization rate is applied to comparable #1's PGI of \$\$\$\$\$, comparable #1's value would be \$\$\$\$\$, more than 25% less than its actual sales price. Use of a more reasonable expense rate for a modified gross lease would result in an even greater disparity between comparable #1's sales price and value that its income would produce with the County's income analysis. For these reasons, the Commission is concerned that some information either about the comparables sales price or lease price, as reported and used in the County's appraisal, is incorrect or the comparable sold, for some unknown reason, for a premium and may be questionable as a comparable.

If the County's next highest adjusted value, \$\$\$\$\$ for comparable #2, is used alone to estimate the subject's value, the subject's 5,520 square feet would have a value of \$\$\$\$\$, which when added to the \$\$\$\$\$ excess land value previously derived, would show a value of \$\$\$\$\$ for the subject. Due to the concerns discussed above, the Commission is not convinced that the County's market approach shows the current County BOE value to be incorrect.

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Income approaches. The Petitioner's 10 lease comparables rented from \$\$\$\$\$ to \$\$\$\$\$ per square foot (a mixture of triple net and modified gross leases). Few, if any, of the locations appear as desirable as the subject.

The County provided four lease comparables that leased from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The comparables were a mixture of triple net and modified gross leases. The County estimated a triple net lease rent of \$\$\$\$\$ per square for the subject without making an adjustment to the modified gross comparables. When applied to the subject property, this lease rate results in a business value of \$\$\$\$\$, which when added to the \$\$\$\$\$ excess land value derived earlier, established a value of \$\$\$\$\$.

As discussed above, there is some concern whether the information about comparable #1 is correct because of the disparity of its sales price and the income that it generates. If this comparable were eliminated from the analysis, the three remaining comparables, at equal weight, would show an adjusted lease rate of \$\$\$\$\$ per square foot. Using this rate in the County's analysis results in a business value of \$\$\$\$\$, which when added to the \$\$\$\$\$ excess land value, shows the subject's value to be \$\$\$\$\$. Were the other comparables that were not triple net leases adjusted to reflect the triple net analysis the County has employed, the value would be less. Due to these concerns, the Commission is not convinced that the County's income approach shows the current BOE value to be incorrect.

Summary. The Petitioner's information is not convincing. Accordingly, the Commission finds no cause to reduce the value of the subject property on this information. The County's information appears much more relevant to the subject property. However, as discussed above, the Commission has concerns about some of the comparables that the County used in its appraisal. In fact, removal of some of the more questionable comparables results in market and income approaches that support the current County BOE

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value. For these reasons, the Commission does not find that the County has provided a sound evidentiary basis for raising the value of the subject property. Accordingly, the Commission sustains the current value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property should be sustained at the \$\$\$\$\$, as set by the County BOE, for the 2004 tax year. The Commission finds that neither party has provided a sound evidentiary basis to change the value. 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.

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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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