

05-0901
Locally Assessed Property Tax
Signed 12/23/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0901
)		
v.	)	Parcel No.	Multi (see attachment)
)		
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF SALT LAKE COUNTY,)		
STATE OF UTAH,	)	Tax Year:	2004
)		
Respondent.	)	Judge:	Chapman

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 1, Representative
PETITIONER REPRESENTATIVE 2, MAI

For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy Salt Lake County
District Attorney
RESPONDENT REPRESENTATIVE 2, from the Salt Lake County
Assessor's Office
RESPONDENT REPRESENTATIVE 3, from the Salt Lake County
Assessor's Office
RESPONDENT REPRESENTATIVE 4, 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 December 15, 2005.

At issue is the 2004 fair market value of three parcels, Parcel Nos. #####-2, #####-3, and #####-1. The three parcels are owned by PETITIONER (“PETITIONER”) and comprise a single economic unit that is located at ADDRESS in CITY, Salt Lake County, Utah. The three parcels total 4.33 acres in size and are the location of the PETITIONER facility that consists of a number of buildings built between the 1930’s and the 1970’s that are used for agricultural retail, warehouse, manufacturing and distribution purposes.

For the 2004 tax year, the County Assessor assessed the three parcels for a total value of \$\$\$\$\$. Based on a new income approach prepared and submitted by the assessor’s office in which it considered the three parcels as a single economic unit, the County BOE decreased the total fair market value to \$\$\$\$\$¹, divided among the three parcels as follows:

<u>PARCEL NO.</u>	<u>Original Assessed Value</u>	<u>County BOE Value</u>
#####-2	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$
#####-1	\$\$\$\$\$	\$\$\$\$\$

1 The County BOE decision states that it reduced the value of the economic unit to \$\$\$\$\$. However, the County BOE’s notices of its final decision for each of the parcels at issue show that, when all values are totaled, the economic unit’s value was set at \$\$\$\$\$.

TOTAL \$\$\$\$\$ \$\$\$\$\$

Square footage of improvements. Both parties have submitted appraisals in which they estimate the value of the subject property as of the lien date. For the Petitioner, PETITIONER REPRESENTATIVE 2 has estimated that the ground floor square footage consists of 76,646 square feet used for retail, warehouse, and distribution purposes and 15,000 square feet used for manufacturing purposes. PETITIONER REPRESENTATIVE 2 concludes that the 15,000 square foot manufacturing building is personal property that is not subject to valuation in this real property matter. While the testimony and pictures submitted at the Initial Hearing show that personal property exists in the manufacturing building, the Commission is not convinced, without additional evidence, that the building in which the manufacturing equipment is located and oftentimes attached is also considered personal property for appraisal or taxation purposes. Accordingly, upon considering the information proffered at this hearing, the Commission finds that the building used for manufacturing purposes is also real property and, thus, its value is also at issue in this real property tax appeal.

On the chance that the Commission were to find the manufacturing space to be real property, the Petitioner argues, in the alternative, that the 15,000 square feet would have no value to another tenant or purchaser and, for this reason, the Commission should attribute no value to this space as real property. PETITIONER REPRESENTATIVE 2 attributed no value to the manufacturing space in the market and income approaches in his appraisal.

PETITIONER REPRESENTATIVE 2 also estimates that the basement is 8,000 square feet in size and, due to its low ceiling height and other limitations, has diminished utility. In his market and income approaches, PETITIONER REPRESENTATIVE 2 did not include the basement as part of the subject's square footage, but accounted for its partial utility by adjusting his comparables in each approach by a positive five per cent.

For the County, RESPONDENT REPRESENTATIVE 2 has estimated the entire ground floor area to be 89,118 square feet in size and estimated that all of the space would have value as storage/warehouses. Although PETITIONER REPRESENTATIVE 2 estimated the manufacturing space to be 15,000 square feet, RESPONDENT REPRESENTATIVE 2 estimated it to be 9,457 square feet, based on a diagram provided by the Petitioner that shows the manufacturing space to be this size. RESPONDENT REPRESENTATIVE 2 has included this diagram on page 25 of his appraisal. PETITIONER REPRESENTATIVE 2's appraisal contains no information showing the dimensions of the manufacturing space, and the County disputes PETITIONER REPRESENTATIVE 2's claim that it has agreed with him concerning these square footages. Given this evidence, the Commission is more convinced of the County's measurements. Accordingly, for purposes of this decision and based on the evidence submitted for this hearing, the Commission concludes that the subject's ground floor area is 89,118 square feet in size and that 9,457 square feet of this space comprises the manufacturing area.

In addition, the County estimates the basement to be 8,850 square feet in size, in comparison to PETITIONER REPRESENTATIVE 2's estimate of 8,000 square feet. Again, as

the County claims to have received its measurements from the Petitioner, as noted on the Petitioner's diagram, the Commission is more convinced of the County's estimate of the basement at 8,850 square feet. Both parties agree that the basement does not have the same utility as the storage/warehouses that comprise the ground floor because of the basement's low ceiling height and lack of utility. Testimony indicates that a forklift can only access a portion of the basement. For these reasons, the County has only included one-half of the basement's total square footage (i.e., 4,425 square feet) in deriving its total rentable square footage of 93,543 square feet for the subject property.

The Commission finds the County's method of appraising space with limited ceiling height and storage utility at one-half its actual square footage more persuasive than PETITIONER REPRESENTATIVE 2's method of adjusting his comparables upward to account for the subject's additional "feature" instead of estimating the price at which it would rent or sell. Accordingly, to account for the basement, the Commission concludes, based on the evidence proffered, that 4,425 square feet of rentable square footage should be included in all approaches. Accordingly, in reaching a final decision in this matter, the Commission will recalculate PETITIONER REPRESENTATIVE 2's approaches by removing the 5% additional feature adjustment and add 4,425 square feet of additional space as rentable square footage and consider the resulting values.

As to the 9,457 square feet of manufacturing space, the few pictures submitted and limited testimony proffered about the space indicate that it, like the basement, has low

ceilings and limited utility as a storage/warehouse. On page 32 of RESPONDENT REPRESENTATIVE 2's appraisal, a picture taken in a "true" storage/warehouse (with high ceilings and open spaces) portion of the subject shows that the manufacturing space (in the distance) has floors with relatively low ceilings and is interspersed with beams and staircases that obstruct the utility of the space. Furthermore, testimony proffered at the hearing indicates that the space is inaccessible by forklift. Accordingly, for the 9,457 square foot manufacturing space, the Commission will adopt the County's technique that it used for the basement space, a space with similar limited functionality as storage space, and will only include one-half of the manufacturing space (i.e., 4,729 square feet) as rentable storage/warehouse square footage in the parties' respective approaches when considering the values derived with the approaches.

The County argues that the entirety of the 9,457 square foot manufacturing space should be considered "useable" space in the various valuation methodologies because PETITIONER currently uses all of it as manufacturing space. However, neither party has submitted comparables of similar manufacturing space to convince the Commission that the subject's manufacturing space would rent or sell for this purpose or, if it did, that it would rent or sell at the same rates submitted for storage/warehouses. Not only do both parties submit comparables of storage/warehouses, but RESPONDENT REPRESENTATIVE 2 also indicates in his appraisal that he has valued the entire subject building as a storage/warehouse. As a storage/warehouse, the manufacturing space would appear to have limited utility, as discussed above. For these reasons, the Commission concludes that the manufacturing space has no better

utility as a storage/warehouse than the basement and will only include one-half of its square footage in the parties' respective approaches. Accordingly, the Commission will deduct one-half of the manufacturing space from the approaches the County used to value the subject as a storage/warehouse. This deduction results in a total of 88,815 square feet of rentable storage/warehouse to be valued in each of the parties' respective approaches.

Income Approaches. For the Petitioner, PETITIONER REPRESENTATIVE 2 adjusted six comparable lease rates and concluded that the subject would rent for \$\$\$\$ per square foot. After deducting his 5% upward adjustment for the additional basement "feature," as discussed above, his rent rate for the subject is recalculated to be \$\$\$\$ per square foot. If this rent rate is applied to the 88,815 square feet of "rentable square footage," as determined above, the resulting PGI is \$\$\$\$. Inserting this PGI into the remainder of PETITIONER REPRESENTATIVE 2's income approach (10% vacancy, 5% expenses, and a %%% capitalization rate) results in an income approach value of \$\$\$\$ for the subject property.

For the County, RESPONDENT REPRESENTATIVE 2 provided five comparable leases that he compared to the subject to conclude that the subject property would lease at \$\$\$\$ per square foot as a storage/warehouse. If this rent rate is applied to the 88,815 square feet of "rentable square footage," as determined above, the resulting PGI is \$\$\$\$. Inserting this PGI into the remainder of RESPONDENT REPRESENTATIVE 2's income approach (10% vacancy, 6% expenses, and a %%% capitalization rate) results in an income approach value of \$\$\$\$ for the subject property.

The two appraiser's income approach elements are quite similar except for the capitalization rates they used. PETITIONER REPRESENTATIVE 2 recommends a capitalization rate of %%% based on comparable capitalization rates that are listed on page 10 of his appraisal. The Commission notes that PETITIONER REPRESENTATIVE 2 had familiarity with a number of these sales and that he explained that the %%% rate at which COMPANY sold in March 2004 is a convincing comparable for the subject because this property is a large retail/storage/warehouse building, like the subject, only newer and with greater functionality. For these reasons, he believes there is more risk associated with the subject than this comparable and that a %%% capitalization rate for the subject is reasonable and, perhaps even, conservative.

RESPONDENT REPRESENTATIVE 2 recommends a capitalization rate of %%% based on the highest of four comparable rates that he obtained from a file located in the Assessor's Office, which he listed on page 18 of his appraisal. When RESPONDENT REPRESENTATIVE 2 was asked to explain what similarities these properties had to the subject property, he admitted that he did not know what the properties were. Because of RESPONDENT REPRESENTATIVE 2 lack of familiarity with the properties that he used as comparables in his appraisal, the Commission does not find his conclusion that the subject would sell at a %%% capitalization rate convincing.

In an effort to support RESPONDENT REPRESENTATIVE 2's use of a %%% capitalization rate, which was based on comparable sales, RESPONDENT

REPRESENTATIVE 3 explained that he believed one could arrive at a similar capitalization rate through an alternative method, specifically by calculating a “band of investment” capitalization rate. In such a method, the investment rates associated with both the equity and debt components of a property are calculated and combined. For the subject property, RESPONDENT REPRESENTATIVE 3 explained how he would calculate equity and debt investment rates and conclude that the subject’s capitalization rate would be approximately %%%%. Upon cross-examination from PETITIONER REPRESENTATIVE 2, however, RESPONDENT REPRESENTATIVE 3 admitted that because the majority of the subject’s value appears to be in its land, adjustments might be needed for the band of investment capitalization rate he had derived for the subject property. Testimony indicated that such adjustments could increase the rate above %%%%.

RESPONDENT REPRESENTATIVE 3 also explained that he had reviewed a list of band of investment capitalization rates and found that very few of them were higher than %%%%. He explained that those rates on the list above %%%% were, as a rule, associated with less desirable properties. As an example, he stated that he was familiar with a property on the list with a %%%% band of investment capitalization rate, a property that was an older storage/warehouse that was built in 1967. His description of the building with a %%%% capitalization rate did not appear to be dissimilar from the features of the subject property.

RESPONDENT REPRESENTATIVE 3’s testimony does not convince the Commission that a %%%% capitalization rate is incorrect. First, there appears to be questions

whether RESPONDENT REPRESENTATIVE 3 correctly calculated a band of investment capitalization rate for the subject, given the value of the subject's land. Second, RESPONDENT REPRESENTATIVE 3's own knowledge and description of properties with very high capitalization rates suggest that a %%% capitalization rate for a property such the subject, which is much older than any other comparable discussed and has severe functionality issues, is the better of the two rates recommended by the parties' respective appraisers. For these reasons, the Commission finds that, based on the evidence and testimony proffered at the Initial Hearing, a %%% capitalization rate for the subject property appears reasonable.

If one substitutes a %%% capitalization rate into the remainder of RESPONDENT REPRESENTATIVE 2's income approach (\$\$\$\$ rental rate for the 88,815 square feet, 10% vacancy, 6% expenses), the income approach would indicate a value of \$\$\$ for the economic unit. In summary, the Petitioner's income approach, with adjustments, shows a value of \$\$\$ for the subject property, while the County's income approach, with adjustments, shows a value of \$\$\$\$. An income approach value of approximately \$\$\$ appears reasonable for the subject.

Market Approach. For RESPONDENT REPRESENTATIVE 2's market approach, he chose four sales that sold at prices ranging from \$\$\$ to \$\$\$ per square foot. When the pictures of these four sales are compared to the pictures of the subject property, appearances indicate that all of the comparables may have greater utility as storage/warehouses

than the subject property. Furthermore, the subject would likely be less desirable given the age and functionality of its buildings. The Commission also notes that one of the comparables, Comparable #4, had “considerable surplus land” (approximately 20 acres) associated with the sale, which would result in the \$\$\$\$ price per square foot for this comparable being inflated. Recalculating this price per square foot after deducting the value of the approximately 20 acres of “surplus” land should result in a lower price per square foot for this comparable. The recalculated price per square foot may be significantly lower than \$\$\$\$ per square foot recommended by RESPONDENT REPRESENTATIVE 2 for the subject property. For these reasons, the Commission is not convinced that the subject would sell for \$\$\$\$ per square foot.

For PETITIONER REPRESENTATIVE 2’s market approach, he chose six sales that sold at prices ranging from \$\$\$\$ to \$\$\$\$ per square foot. As discussed earlier, the Commission is removing the 5% upward adjustment that PETITIONER REPRESENTATIVE 2 made for the basement space in order to include the basement square footage in the 88,815 square feet of “rentable” area. After making this adjustment, PETITIONER REPRESENTATIVE 2’s adjusted price per square foot for the subject is \$\$\$\$, which when applied to the 88,815 of rentable square feet results in a market value of \$\$\$\$.

From all of the market information submitted, the lower adjusted price of \$\$\$\$ per square foot appears more reasonable for a property such as the subject than the price per square foot that the County determined. Perhaps if the County had considered some of the sales

that sold for less than \$\$\$\$ per square foot, as PETITIONER REPRESENTATIVE 2 did, or had recalculated its own Comparable #4 to account for the 20 acres of surplus land, its conclusion would have been different. Based on the information proffered at the Initial Hearing, the Commission finds that the most convincing price per square foot for the subject property should be no more than \$\$\$\$ per square foot, which equates to approximately \$\$\$\$.

Reconciliation. Based on the information submitted at the Initial Hearing, the Commission has determined that a reasonable value for the subject property is \$\$\$\$ using an income approach and \$\$\$\$ using a market approach. There is a significant range between these two values. The Commission notes that both PETITIONER REPRESENTATIVE 2 and RESPONDENT REPRESENTATIVE 2 also arrived at income approach values that were significantly lower than their respective market approach values. To reconcile their values into a final estimate of value, each appraiser concluded that the subject's fair market value was, in RESPONDENT REPRESENTATIVE 2's case, exactly in the middle of the two approaches' values and, in PETITIONER REPRESENTATIVE 2's case, approximately in the middle of the two approaches' values. For this reason, the Commission concludes that \$\$\$\$\$, which is between the \$\$\$\$\$ value determined by the income approach and the \$\$\$\$\$ value determined with the market approach, is a reasonable estimate of the subject's fair market value.

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

Both parties have submitted appraisals that convince the Commission that the value of the economic unit, as set by the County BOE, is too high. After making adjustments to the approaches submitted in both appraisals, as discussed above, the Commission concludes that \$\$\$\$ is a reasonable estimate of the economic unit's fair market value for 2004 property tax purposes.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the total fair market value of the three parcels at issue should be reduced from \$\$\$\$\$ to \$\$\$\$\$ for the 2004 tax year. If the reduction in value were applied proportionately to all three parcels, a land value adjustment would be required for Parcel No. #####-2. To avoid this consequence, the deduction will be applied proportionately only to the other two parcels, as follows.

	County BOE Value	Tax Commission Decision
Parcel No. #####-2		
Real Estate	\$\$\$\$\$	\$\$\$\$\$
Improvements	\$\$\$\$\$	\$\$\$\$\$
TOTAL	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>

Parcel No. #####-3		
Real Estate	\$\$\$\$\$	\$\$\$\$\$
Improvements	\$\$\$\$\$	\$\$\$\$\$
TOTAL	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>

	County BOE Value	Tax Commission Decision
Parcel No. #####-1		
Real Estate	\$\$\$\$\$	\$\$\$\$\$
Improvements	\$\$\$\$\$	\$\$\$\$\$
TOTAL	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>
ECONOMIC UNIT	\$\$\$\$\$	\$\$\$\$\$

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The Salt Lake County Auditor is 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.

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.

Pam Hendrickson

R. Bruce Johnson

Appeal No. 05-0901

Commission Chair

Palmer DePaulis
Commissioner

KRC/05-0901.int

Commissioner

Marc B. Johnson
Commissioner

Appeal No. 05-0901

ATTACHMENT

The parcels at issue in this appeal:

#####-2

#####-3

#####-1