

05-1776
Locally Assessed Property Tax
Signed 07/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1776
v.)		
	)	Parcel Nos.	#####-1
BOARD OF EQUALIZATION	)		#####-2
OF WASHINGTON COUNTY,	)	Tax Type:	Property Tax/Locally Assessed
STATE OF UTAH,	)	Tax Year:	2005
)		
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:

Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Washington County Assessor
 RESPONDENT REPRESENTATIVE 2, from the Washington County
 Assessor's Office
 RESPONDENT REPRESENTATIVE 3, from the Washington 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 June 28, 2006.

At issue is the fair market value of the two subject properties as of January 1, 2005, the lien date. The two properties are Parcel No. #####-1 ("#####-1") and Parcel No. #####-2 ("#####-2"). They are

adjacent to one another and located at ADDRESS in CITY, Washington County, Utah. #####-1 is 1.14-acre backage parcel that is accessed through #####-2. For the 2005 tax year, the County Assessor assessed #####-1 at \$\$\$\$\$, which the Washington County Board of Equalization (“County BOE”) increased to \$\$\$\$\$. #####-2 is a 0.47-acre frontage parcel located on STREET. For the 2005 tax year, the County Assessor assessed #####-2 at \$\$\$\$\$, which the County BOE reduced to \$\$\$\$\$.

The County explains that, as of the lien date, #####-1 had storage units on it and that #####-2 did not have any structures on it. However, when the properties were assessed, the value of the storage unit improvements was assessed to #####-2, not #####-1. The County BOE corrected this mistake by removing the improvement value of \$\$\$\$\$ that had been assessed to #####-2 and adding an improvement value of \$\$\$\$\$ to #####-1.¹ The Petitioner agrees that the storage buildings were located on #####-1, not #####-2. The County BOE did not change the land value that had been originally assessed to each of the parcels.

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

¹ The County explained that it essentially “transferred” the value of the storage units from one parcel to another. It explained that the corresponding \$\$\$\$\$ increase in value was due to the assessor’s office employing a more accurate version of the Marshall & Swift cost valuation program at the time the County BOE met than it had used when it developed its assessment roll for the 2005 tax year.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *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

The Petitioners have built additional improvements on both of the subject parcels since the lien date of January 1, 2005. At issue in this appeal, however, is the value of the real property that existed as of the lien date. For #####-1, that entails determining the value of the 1.14 acres of land and five buildings of storage units that existed on January 1, 2005. For #####-2, it entails determining the value of the vacant, 0.47-acre parcel of land.²

#####-1. As of the lien date, this parcel was comprised of 1.14 acres of land and five buildings that contained approximately ##### storage units of varying sizes.³ The County BOE has established the land value at \$\$\$\$\$ and the improvements value at \$\$\$\$\$, for a total value of \$\$\$\$\$.

2 Although the testimony indicated that a road had been built on #####-2 prior to the lien date to access the storage units on #####-1, the County attributed no value to such an improvement in its cost approach for #####-2. In addition, the County derived a value for the real property comprising the storage unit business using an income approach and attributed the entire value from this approach to #####-1. However, it is arguable that because a portion of #####-2's land is used to support the business on #####-1, a portion of the value derived from the income approach should be attributed to #####-2. Nevertheless, neither of these arguments was made and no evidence was proffered to show what adjustments, if any, would be appropriate to account for the road. Accordingly, in this decision, the Commission will consider #####-2 vacant and unrelated to the storage unit business attributed to #####-1.

3 Although the original plans for the five storage buildings showed them to be divided into ##### units, the Petitioner explained that, in 2004, he turned ##### of the originally built 10' X 10' units into ##### 10' X 20' units by removing the interior walls, thereby reducing the total number of units from ##### to ##### as of the lien date. The County was unaware that the Petitioner had altered the number of units.

The Petitioner does not dispute the \$\$\$\$ value that the County BOE placed on the improvements, stating that it is close to the cost that was incurred to construct the storage units. However, the Petitioner contests the land value, arguing that it should be no more than \$\$\$\$ because #####-1 has no access to the city's sewer system. Nevertheless, the Petitioner admits that access to the sewer system is not necessary to support the storage unit business that has been built on the property. The parties have not proffered any land sales that would show whether the \$\$\$\$ land value is correct or what effect the lack of sewer access would have on the value of the subject's land, if any. For these reasons, the Commission finds that the Petitioner has not proffered any evidence or testimony to call the land value into question or show what its value should be.

The County BOE valued the land and the improvements based on a cost approach provided by the assessor's office. The County explains that the land value is based on sales on other properties. However, no comparables are provided. In addition, the County explains that it determined the value of the improvements with the Marshall & Swift valuation program. However, no evidence was proffered to show how the program was applied to the subject to determine if it was accurate or not. Accordingly, there is insufficient evidence for the Commission to determine whether the cost approach used to derive the value set by the County BOE resulted in an accurate value for the subject property.

The County also prepared two income approaches to value to support the \$\$\$\$ value that was derived with the cost approach. In its first income approach, the County estimated the value of the storage unit business's real property by capitalizing "market" rents per square foot of storage space. The County proffers that the five storage buildings contain 8,950 square feet of storage space and that the space should rent for \$\$\$\$ per square foot per month, based on a June 2005 study prepared by COMPANY. From the potential gross income ("PGI") that results from these rents, the County deducted 4% vacancy and collection loss, proffering that its own studies show this loss to be typical for storage units in Washington County. Next, the

County deducted expenses of 8% to derive a net operating income (“NOI”) of \$\$\$\$\$. Lastly, the County applied both a %%% and a %%% capitalization rate to the NOI to estimate the business’s value to range from \$\$\$\$\$ to \$\$\$\$\$.

In its second income approach, the County used “actual” rents charged by the Petitioner. However, the County determined actual rents using the ##### units originally planned, not the ##### units that existed as of the lien date. Changing the number of 10’ X 10’ units from ##### to ##### and the number of 10’ X 20’ units from ##### to ##### in this income approach results in an adjusted PGI of \$\$\$\$\$. Applying the same vacancy and collection loss rate, expense rate, and capitalization rates that were used in the first income approach results in the value of the business’s real property ranging from \$\$\$\$\$ to \$\$\$\$\$.

The Petitioner did not challenge the rental rates, the expense rate, or the capitalization rates used in these income approaches. Although the Petitioner stated that only ##### of the ##### units were rented as of the lien date, the resulting vacancy rate of 4.8% is close enough to the 4% rate used by the County so as not to require a short-term rent loss adjustment to the income approaches.⁴ Given that there is no evidence to counter any of the market rates used by the County, the Commission finds that the value of the storage unit business’s real property, as existing on the lien date, would range between \$\$\$\$\$ and \$\$\$\$\$.

However, testimony at the hearing indicated that another set of storage buildings were built on this #####-1 after the lien date. This fact would suggest that excess land existed on #####-1 as of the lien date. Because the County’s income approaches would value the real property associated with the storage units that

⁴ The Commission will consider arguments that a vacancy rate temporarily below a “stabilized” market vacancy rate reduces a property’s value due to the short-term rent loss experienced during the “lease-up” period. The Commission has found such a reduction appropriate on the theory that a well-informed buyer will pay less for a building with vacancy that is temporarily below a “stabilized” market rate than for a building with no excess vacancy. See *xxxxx v. Davis County BOE*, USTC Appeal No. 04-0626, in which the Commission reduced the County’s income approach value because it did not account for the short-term rent loss that the specific property would experience during a lease-up period.

were built as of the lien date and not the excess land, the County's income approach alone may underestimate the total value of #####-1. However, no evidence or testimony was proffered for the Commission to determine what percentage of the land was "excess," as of the lien date, and how to calculate the additional value that it might add to the parcel's value. For these reasons, the \$\$\$\$ value established by the County BOE for #####-1 is adequately supported by the values derived for the storage unit's business real property using the income approach, as these values range as high as \$\$\$\$\$. Furthermore, depending on the value of the "excess" land that existed on the lien date, the value established by the County BOE value may be low. For these reasons, the Commission sustains the \$\$\$\$ value established by the County BOE for #####-1.

#####-2. As of the lien date, no building existed on this 0.47-acre parcel, and as discussed earlier, the Commission will consider this parcel vacant for purposes of this decision. The County BOE established a value of \$\$\$\$ for this parcel, all of it attributed to the land. The County explains that this value equates to \$\$\$\$ per square foot, which is the rate it applies to lots with frontage on STREET in CITY.

The Petitioner asserts that this value is too high because of rumors that the State of Utah may take part of the subject #####-1 other lots on STREET to widen that street. However, the Petitioner has not provided any sales to show that this possible action is causing similar lots to sell for less than \$\$\$\$ per square foot. The County asserts that it has sales of similar lots selling in the \$\$\$\$ per square foot range, but none are proffered as evidence. Although there is no evidence to show what the value of this parcel is, the Petitioner has the burden to call the value established by the County BOE into question and provide evidence of an alternative value. The Commission finds that the Petitioner has not met this burden, based on the evidence and testimony proffered at the Initial Hearing. Accordingly, the Commission sustains the \$\$\$\$ value established by the County BOE for #####-2.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's appeal and sustains the values established by the County BOE for both parcels at issue. 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 _____, 2006.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 05-1776

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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

KRC/05-1776.int