

06-0960
Property Tax/Locally Assessed
Signed 05/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER)		
	)	ORDER	
)		
Petitioner,	)	Appeal No.	06-0960
)		
v.	)	Parcel No.	#####
)		
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF SALT LAKE COUNTY,)		
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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Representative
For Respondent: RESPONDENT REPRESENTATIVE, 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 May 8, 2007.

At issue is the fair market value of the subject property as of January 1, 2005. The subject property is an industrial warehouse located at ADDRESS in CITY, Utah. For the 2005 tax year, the property was assessed at \$\$\$\$\$, which the Salt Lake County Board of Equalization ("County BOE") reduced to \$\$\$\$\$.

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.

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 subject property consists of 16.27 acres of land and an industrial warehouse that was built in 1999. The industrial warehouse contains 328,508 square feet of rentable space. In 2000, two tenants leased the entirety of the subject property, specifically: 1) COMPANY A, which leased 240,004 square feet at \$\$\$\$ per square foot on a triple net (“NNN”) lease that expired October 2005; and 2) COMPANY B, which leased 88,504 square feet at \$\$\$\$ per square foot on a NNN lease that expires in 2010. The area leased by COMPANY B contains about 9% office space, while the area leased by COMPANY A contains no more than 4% office space.

Around 2003, COMPANY A vacated the space it was leasing, but remained liable for the rent through October 2005. As a result, COMPANY A subleased 190,000 of its total 240,004 square feet to COMPANY C at \$\$\$\$ per square foot. COMPANY A failed to sublease the remaining 50,004 square feet, but continued to pay rent on it until its lease expired.

In March 2005, COMPANY C signed a lease with the Petitioner that allowed it to continue leasing the 190,000 square feet it had been subleasing from COMPANY A. This 63-month lease took effect in October 2005. This lease provided COMPANY C with three months of free rent and a beginning lease rate of \$\$\$\$ per square foot.

Since October 2005, the remaining 50,004 square feet that COMPANY A had leased has remained vacant and has not generated income for the Petitioner. In 2005, the Petitioner attempted to lease the vacant space at \$\$\$\$ per square foot, but was unsuccessful. Because of rising lease rates in Salt Lake County from 2005 to the present, the Petitioner is currently asking \$\$\$\$ per square foot to lease the vacant space, but has not been successful. The County confirms that the market for industrial warehouse space in Salt Lake County was relatively depressed around the lien date but has improved significantly since that time.

Petitioner's Information. The Petitioner proffered an income approach with which it estimated the subject's value to be \$\$\$\$¹ as of the lien date. The Petitioner used five comparable leases to estimate the subject's market rent at \$\$\$\$ per square foot (NNN) as of January 1, 2005. The five leases were for large industrial properties that leased in 2004 and 2005 at rates between \$\$\$\$ and \$\$\$\$ per square foot and included the 2005 lease of a majority of the subject property at \$\$\$\$ per square foot. No information, however, is available about the ages of the other four comparables or the percentages of their office spaces so that these features could be compared to the subject property.

For the 2005 tax year, the Petitioner applied its \$\$\$\$ per square foot market rent rate to the square footage currently leased to COMPANY C and COMPANY B and a \$\$\$\$ lease rate to the 50,004 square feet currently vacant, resulting in a potential gross income (“PGI”) of \$\$\$\$\$. The Petitioner applied a 10% vacancy rate and a 6% fixed and variable expense rate to the PGI, resulting in a net operating income (“NOI”) of \$\$\$\$\$.

The Petitioner determined that the NOI should be capitalized at a %%% capitalization rate. The Petitioner proffered that a %%% rate was reasonable because of the Commerce CRG report that shows the typical capitalization rate for industrial properties in Salt Lake County to be %%% for year end 2004. The Petitioner also provided two capitalization rate comparables to support its use of a %%% capitalization rate. One of the comparables, an industrial property that was built in 1997, sold in 2003 at a %%% rate. A second property, which was built in 1999, sold in 2005 at a %%% rate. All of these rates are higher than the %%% rate used by the Petitioner to capitalize the subject’s NOI. Because the subject property is newer than many industrial properties and is in good condition, the Petitioner believed that the lower %%% rate was reasonable. Capitalizing the NOI of \$\$\$\$\$ by %%% results in a value of approximately \$\$\$\$\$. The Petitioner asks the Commission to lower the subject’s value to this amount.

County’s Information. The County proffered an appraisal in which it concluded that the subject’s fair market value was \$\$\$\$\$ as of the January 1, 2005 lien date. The County appraisal included both a sales comparison approach and an income approach. With its sales approach, the County compared the subject to three properties, one that sold in 2003 and two that sold in 2005. These sales, when adjusted, show a price of approximately \$\$\$\$ per square foot for a large industrial warehouse such as the subject. When the

1 The Petitioner had originally calculated an income approach estimate of value of \$\$\$\$\$, but stated at the hearing that correcting a small error in its expense rate would increase the value to \$\$\$\$\$.

\$\$\$\$ per square foot price is applied to the subject's 328,508 square feet, the resulting value for the subject would be approximately \$\$\$\$.

With its income approach, the County determined that the subject's value would be approximately \$\$\$\$.² In its appraisal, the County provided six comparable leases for large industrial properties that were built between 1995 and 1999 and were leased in 2004 and 2005 at prices ranging between \$\$\$\$ and \$\$\$\$ per square foot. However, because a majority of the subject's space was leased in 2005 at \$\$\$\$ per square foot, the County appraiser estimated at the hearing that the subject property's market rent rate would be better reflected at \$\$\$\$ per square foot than at the \$\$\$\$ rate shown by its comparables alone. The appraiser also explained that the \$\$\$\$ rate would be more reasonable than the \$\$\$\$ rate at which COMPANY C leased the "old" COMPANY A space because the area leased by COMPANY B had a higher percentage of office space. At a lease rate of \$\$\$\$ per square foot, the subject's PGI would be \$\$\$\$.

The Petitioner also applied a 10% vacancy rate and a 6% reserves and expense rate to the PGI, which would result in an NOI of \$\$\$\$.

The County determined that an %%% capitalization rate should be applied to NOI to estimate the subject's value using the income approach. The County provided six capitalization rate comparables to support its conclusion. The six comparables included the same two comparables that the Petitioner provided, which showed capitalization rates of %%% and %%%, respectively. The County also included four additional comparables that sold in 2003 and 2005, which showed capitalization rates of

2 The County had originally calculated an income approach estimate of value of \$\$\$\$\$. At the hearing, however, the County appraiser stated that had she known of the subject's actual lease rates at the time she prepared her appraisal, she would have used a \$\$\$\$ per square foot market lease rate for the subject property instead of the \$\$\$\$ per square foot rate she estimated in the appraisal. This change reduces the County's income approach estimate of value from \$\$\$\$\$ to approximately \$\$\$\$.

%, %, %, and %, respectively. Applying an % capitalization rate to the NOI of \$\$\$\$ results in an income approach value of approximately \$\$\$\$.

The Petitioner requested that the Commission increase the subject's value from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$, as shown by its revised income approach. When the County appraiser was asked if her recommended value should be higher because of the \$\$\$\$\$ value she estimated with the sales comparison approach, she stated that it would not seem fair to increase the subject's value above the value estimated by the income approach.

Analysis. When both the comparables sales information and the income information are considered, the Commission finds that the totality of the evidence establishes a fairly wide range of value estimates. First, the Commission will address the income approach information. The parties' income approaches were similar except for their respective market rents and capitalization rates.

Market rents. The Petitioner recommended a market rent approximating the \$\$\$\$ per square foot rate at which a majority of the subject property leased in 2005. Although the County initially recommended a market rent rate of \$\$\$\$\$, the County appraiser changed that estimate to \$\$\$\$ per square foot when she became aware that 190,000 square feet of the subject property had leased in 2005 at a rate of \$\$\$\$\$. The County appraiser's revised estimate of market rents was made on the spot at the hearing, without any detailed analysis. Although the new estimate of \$\$\$\$ per square foot is not unreasonable, there was no analysis to support that specific figure.

In considering the rents submitted by both parties, the Commission observes that the comparable leases proffered by the parties range from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The Commission is persuaded that \$\$\$\$ per square foot is an appropriate market rent rate for the 240,004 square feet of space vacated by COMPANY A and leased, in part, by COMPANY C. The Commission also recognizes that the

88,504 square feet leased to COMPANY B has a higher percentage of office space than the 190,000 square feet that leased at \$\$\$\$ per square foot. For this reason, the Commission is persuaded by the County's argument that the 88,504 square feet is superior to the rest of the subject's space and warrants a higher market rent. As a result, the Commission finds that the subject's appropriate market rent is \$\$\$\$ per square foot for 240,004 square feet and \$\$\$\$ per square foot for the remaining 88,504 square feet.

These rents produce a PGI of \$\$\$\$ for the 240,004 square foot space and \$\$\$\$ for the remaining 88,504 square feet, for a total PGI of \$. Both parties recommended a 10% vacancy expense and a 6% total expense rate which, when applied to the \$\$\$\$ PGI, results in an NOI of \$\$\$\$.

Capitalization Rate. The second issue to consider in the income approach is the capitalization rate. The Petitioner recommends a % rate and the County recommends an % rate. The Petitioner's two capitalization rate comparables were among the six comparables that the County also proffered. In reviewing the County's six comparables, the Commission notes that Comparable #4, which sold in February 2005 at a rate of %, appears to be an outlier. Furthermore, this comparable sold in February 2005 after the lien date, and both parties acknowledge a strong upswing in the market after the lien date. However, County Comparable #5 sold in March 2005 at a rate of %, which appears to show that the market had not entirely improved by early 2005. The Commission further notes that County Comparable #3, which sold in January 2005, is closest in location to the subject and indicates a cap rate of %, significantly lower than the remaining four comparables and suggesting a premium for properties in the same industrial complex as the subject. Of the six comparables submitted by both parties, three show rates that were greater than % and three show rates lower than %.

Based on this information, the Commission finds that the broad range of information supports a general capitalization rate of % for the subject. However, the % capitalization rate shown by

County Comparable #3 for a property very close in location to the subject would suggest that the lower rate proposed by the County may be more appropriate for the subject property. Because the capitalization rate information is somewhat contradictory, the Commission finds that neither party has proved that its recommended capitalization rate is superior to the other party's. For this reason, the Commission will consider a range of values calculated with the income approach. If the %%% and %%% capitalization rates are both applied to the NOI of \$\$\$\$\$, as calculated above, the income approach produces a value range of \$\$\$\$\$ to \$\$\$\$\$ for the subject property.

Reconciliation with the comparable sales approach. If the income approach were considered alone, the Commission would find that the \$\$\$\$\$ value established by the County BOE should be reduced to a value no greater than \$\$\$\$\$. However, the Commission believes the sales comparison information the County provided is pertinent and should also be considered in the final decision, even though the County only used it to corroborate the value it had determined with the income approach.

The County's three comparable sales sold for \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, respectively, and adjusted to prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot, respectively. The adjusted sales prices, when applied to the subject's 328,508 square feet, would indicate a value range of \$\$\$\$\$ to \$\$\$\$\$ for the subject, much greater than the value indicated by the income approach information alone.

The Commission also notes that the County's sales comparison Comparable #1, which sold for \$\$\$\$\$ per square foot and adjusted to \$\$\$\$\$ per square foot, appears inferior to the subject because of its age and condition. The other two sales are of similar age and condition as the subject. Furthermore, Comparable #2, which sold at \$\$\$\$\$ per square foot, appears most similar to the subject not only in terms of age and condition, but also location (within 2 blocks of the subject). Its adjusted sales price of \$\$\$\$\$ per square foot would suggest a value of \$\$\$\$\$ for the 328,508 square foot subject. In addition, the Commission

notes that the County's capitalization rate Comparable #3 was also located within two blocks of the subject and showed a low capitalization rate of %%%%, further suggesting that properties in the subject's neighborhood sell for a premium. When the sales comparison information is considered along with the income information, the Commission is not convinced that the \$\$\$\$ value established by the County BOE either underestimates or overestimates the subject's fair market value.

Summary. Based on this analysis, the Commission finds the \$\$\$\$ value established by the BOE is bracketed by the \$\$\$\$ to \$\$\$\$ million value range shown by the income approach and by the \$\$\$\$ to \$\$\$\$ million range shown by the comparable sales approach. Accordingly, the Commission finds that the existing value established by the County BOE represents a reasonable estimate of the subject's fair market value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property, as established by the County BOE, should be sustained at \$\$\$\$ for the 2005 tax year. 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.

Appeal No. 06-0960

DATED this _____ day of _____, 2007.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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