

07-0069
Property Tax / Locally Assessed
Signed 09/24/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	ORDER Appeal No. 07-0069 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2006 Judge: Chapman
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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 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, Managing Partner
 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 September 20, 2007.

At issue is the fair market value of the subject property as of January 1, 2006. The subject property, which is comprised of a COMPANY A service facility and a mini-storage warehouse facility, is located at ADDRESS in CITY, Utah. For the 2006 tax year, the Salt Lake County Board of Equalization

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(“County BOE”) sustained the \$\$\$\$ value at the subject property was originally assessed. The Petitioner asks the Commission to reduce the subject’s value to \$\$\$\$\$, while the County asks the Commission to sustain the County BOE value.

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 is a commercial property that is comprised of 3.06 acres of land and improvements associated with two businesses. The improvements includes a mini-storage warehouse comprised of 619 rental units that contain 62,775 square feet and a motor vehicle service building that is leased to a COMPANY A business and contains 2,376 square feet.

Petitioner’s Information. The Petitioner contends that the Commission should value the subject property based on its actual net operating income (“NOI”) of \$\$\$\$\$, as shown on its 2005 profit and

loss statement. To this amount of NOI, the Petitioner asserts that a %%%% capitalization rate should be applied, which produces the \$\$\$\$ value the Petitioner is requesting.

The Commission, however, is concerned that the Petitioner's income approach underestimates the subject property's value. First, the Petitioner's approach deducts property taxes as an expense. Such an approach is only appropriate if the property tax rate has not already been added to the capitalization rate, which is sometimes referred to as "loading the cap rate." The Petitioner states that a County appraiser told him that a %%%% capitalization rate would be appropriate for the subject property. However, the Petitioner does not know whether the %%%% capitalization rate he obtained had been "loaded" to include the property tax rate or not. If the County appraiser gave the Petitioner a rate that already included the property tax, the Petitioner's approach would be incorrect because it "double-counts" the property tax expense. The Commission notes that removing the property taxes expense from the expense portion of the profit and loss statement would increase the subject's value approximately \$\$\$\$ above the value requested by the Petitioner.

Second, the effective gross income ("EGI") of \$\$\$\$\$, as shown on the Petitioner's profit and loss statement, reflects a 29% vacancy rate for the 2005 tax year for the mini-warehouse portion of the property. However, a vacancy rate of 29% does not appear, from the evidence proffered at the Initial Hearing, to be an ordinary, or "stabilized," condition affecting the subject property. First, by December 2005, the vacancy rate had fallen to 14%, and the Petitioner stated that the vacancy rate continued to drop during 2006. Furthermore, the County proffered evidence showing that the vacancy rate of other mini-storage warehouses during 2005 and 2006 ranged between 8% and 18%, leading the County to conclude that the subject's stabilized vacancy rate is approximately 15%. For these reasons and given that there is no evidence to show that the subject's ordinary, stabilized vacancy rate is greater than 15%, the Commission finds that the Petitioner's income approach underestimates the subject's value because it capitalizes temporary losses of

income due to extraordinary and non-permanent vacancies. Increasing the Petitioner's EGI to reflect a stabilized vacancy rate of 15% would result in additional value in excess of \$\$\$\$\$.

Given these criticisms of the Petitioner's income approach, it would appear that the subject property's value may well be in excess of the \$\$\$\$\$ value established by the County BOE. As a result, the Commission finds that the Petitioner's income approach does not demonstrate that the County BOE value is too high.

The Petitioner also asserts, in the alternative, that an income approach is not a valid method to value the subject property because operating a mini-storage warehouse is a service and capitalizing the income received from providing a service is inappropriate. The Commission disagrees. From the evidence and testimony proffered at the Initial Hearing, it appears that the price at which a mini-storage warehouse would sell would be dependent on the income a buyer could expect to receive from the property. Accordingly, the Commission finds the income approach to be a reasonable method to value the subject property.

County's Information. The County proffers an appraisal prepared by RESPONDENT REPRESENTATIVE, in which she concludes that the subject's fair market value was \$\$\$\$\$ as of the January 1, 2006 lien date. Although this value is greater than the subject's current value of \$\$\$\$\$, the County does not ask the Commission to raise the subject's value. Instead, the County proffers the appraisal to support the current assessed value.

In its appraisal, the County included both a sales comparison approach, with which it estimated a value of \$\$\$\$\$, and an income approach, with which it estimated a value of \$\$\$\$\$. The County gave no weight to the sales comparison approach when correlating a final estimate of value, explaining that properties such as the subject usually sell at values dependent on the income produced. The sales comparable approach does not appear to be as convincing as the income approach to the Commission either, because the comparables used for the mini-storage warehouse facility and the COMPANY A facility are somewhat

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dissimilar to the subject's improvements in size (for the mini-storage warehouse) and type of structure (for the COMPANY A building).

In arriving at a total income approach value of \$\$\$\$ for the subject, the County produced separate income approaches for the mini-storage warehouse facility and the COMPANY A facility. For the mini-storage warehouse, the County used the Petitioner's actual potential gross income ("PGI"), deducted a stabilized vacancy of 15%, deducted actual expenses, and capitalized the resulting NOI at %%%% (%% plus property tax rate of %%%%) to arrive at a value of \$\$\$\$\$. From this value, the County deducted \$\$\$\$ as short-term rent loss, due to the fact that the subject had experienced excess vacancy during the 2005 calendar year. The Commission does not believe the short-term rent loss is appropriate because there is no indication that as of the lien date, the subject property would experience any rent loss due to vacancy in 2006. On the contrary, based on the Petitioner's testimony, there might be some short-term windfalls due to unusually low vacancy rates in 2006.

For the COMPANY A building, the County did not use the actual rent rate of \$\$\$\$ per square foot (triple net) because it was based on a six-year old leases and newer leases of comparables showed higher lease rates. When the County adjusted the comparables, it determined that a lease rate of \$\$\$\$ per square foot would be appropriate. This lease rate produces a PGI of \$\$\$\$\$, to which the County applied a 5% vacancy rate (the COMPANY A building has not experienced any vacancy for years) and a 6% reserves and expense rate. To the resulting NOI of \$\$\$\$\$, the County applied a %%%% capitalization rate that was not loaded for property taxes (as the property owner does not pay the taxes under a triple net lease) and derived a value of \$\$\$\$ for this portion of the property. Although the Commission questions the ceiling height adjustment in the comparable rent analysis, any decrease in value for the COMPANY A building by eliminating this adjustment would be offset by the increase in value for the mini-storage warehouse resulting

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from the elimination of the short-term rent loss the County applied. Accordingly, the \$\$\$\$ value estimated by the County does not appear unreasonable.

In conclusion, the Commission finds the County's appraisal to be reasonable and to clearly support the \$\$\$\$ value established by the County BOE. For this reason and because the Petitioner has not convinced the Commission that the subject's current value is too high, 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, as established by the County BOE, should be sustained at \$\$\$\$ for the 2006 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.

DATED this _____ day of _____, 2007.

Kerry R. Chapman
Administrative Law Judge

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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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