

07-0078
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. 07-0078 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 is a mini-storage warehouse property located at approximately ADDRESS in CITY, Utah. For the 2006 tax year, the Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at the

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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 4.01 acres of land and a mini-storage warehouse that is comprised of 716 rental units and contains 62,835 square feet. Approximately 0.30 acres of the acreage is vacant and is used to store (X).

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. Because the same appraiser had given him a % rate for another similar property he owns, he believed that the higher % rate should be used for this property as well. However, the Petitioner does not know whether either the % or 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 vacancy rate of approximately 30%¹ for the 2005 tax year for the subject property. However, a vacancy rate of 30% 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 20%, and the Petitioner stated that the vacancy rates, in general, continued to drop during 2006 for the mini-storage warehouses he owns. 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

1 Although the County originally calculated its income approach on the basis that the actual vacancy rate was 20% for the entirety of 2005, the appraiser stated at the hearing that the calculation was erroneous. At the hearing, the appraiser determined that the actual vacancy that occurred during 2005 was approximately 30%.

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 in its profit and loss statement to reflect a stabilized vacancy rate of 15% and allowing a short-term rent loss for the 5% of additional vacancy still present as of the lien date 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 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 are dissimilar to the subject property in size.

In arriving at an income approach value of \$\$\$\$\$ for the subject, the County used a market rent that was approximately 2% less than the subject's actual rent. When the market rents are applied to the subject's 716 storage units, a PGI of \$\$\$\$\$ is produced. When a 15% stabilized vacancy rate and additional income (late fees, nonrefundable deposits, etc.) are factored in, an EGI of \$\$\$\$\$ results. The County then deducted expenses of \$\$\$\$\$ and reserves of \$\$\$\$\$ to derive an NOI of \$\$\$\$\$, even though the subject's actual expenses (after property taxes were removed), as shown from the 2005 profit and loss statement, were \$\$\$\$\$. To NOI, the County applied a %%% capitalization rate (%% rate loaded with a %% property tax rate) to arrive at a value of \$\$\$\$\$. To this value, the County added the value of the excess land used to store (X) (\$\$\$\$\$) and subtracted out short-term rent losses resulting from 5% of excess vacancy that existed as of the lien date (\$\$\$\$\$) to arrive at a final estimate of value at \$\$\$\$\$.

The Commission finds the County's income approach to be reasonable and, generally, well-supported. The only concern is whether the County's estimated expenses or Petitioner's actual expenses should be used in the approach. If the actual expenses are used instead of the County's estimated expenses and reserves, the County's value would decrease from \$\$\$\$\$ to \$\$\$\$\$, which is nearly equivalent to the County BOE value of \$\$\$\$\$. Accordingly, even if actual expenses were used in the County's income approach, the County BOE value is supported. For these reasons, the Commission believes that, based on the evidence and testimony available at the Initial Hearing, the Petitioner has not shown that the \$\$\$\$\$ value established by the County BOE is incorrect. Accordingly, the Commission sustains the County BOE value.

DECISION AND ORDER

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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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