

07-0168
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2006
SIGNED: 12-28-2007
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON
ABSENT: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	ORDER Appeal No. 07-0168 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 REP. 1, Representative
 PETITIONER REP. 2, MAI (by telephone)
 For Respondent: RESPONDENT REP. 1, from the Salt Lake County Assessor's Office
 RESPONDENT REP. 2, 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 July 18, 2007.

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At issue is the fair market value of the subject property as of January 1, 2006. The subject property is a transit/distribution facility located at approximately ADDRESS 1 in CITY, Utah. For the 2006 tax year, the property was assessed at \$\$\$\$\$, which the Salt Lake County Board of Equalization (“County BOE”) reduced to \$\$\$\$\$. The Petitioner asks the Commission to reduce the subject’s value to \$\$\$\$\$, while the County asks the Commission to increase the subject’s value 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 (#) acres of land and a transit/distribution facility that was built in YEAR. The facility, which the County refers to as a “(WAREHOUSE),” contains (#) square feet of space, of which approximately %%% is office space. The building’s ceilings are approximately (#)

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feet in height. In addition, approximately (#) square feet, or %%%%, of the building is designed for controlled temperatures and was built as cooler space.

The building is approximately (#) feet long and (#) feet wide and has (PORTION REMOVED) Shipments received at the facility are unloaded from trucks at docks on one side of the building. Next, the goods received are transported to different areas of the building where shipments are “staged” for transport. Finally, the staged goods are loaded into trucks at docks on the opposite side of the building for delivery.

Approximately (#) acres of the total (#) -acre site is used in conjunction with the (#) square foot building. The excess acreage of (#) acres is available for future development, as the building is designed so that it can be expanded at each end. The land to building ratio, based on the (#) square foot building and the (#) acres used to support it, is (#).

County’s Information. The County proffers an appraisal prepared by RESPONDENT REP. 2, in which he concluded that the subject’s fair market value was \$\$\$\$ as of the January 1, 2006 lien date. This is the value the County requests that the Commission establish for the subject. The County’s appraisal only includes a cost approach. The County states that it would be inappropriate to use a sales comparison approach or an income approach, in this particular instance, because it is unaware of any sale or lease of a “(WAREHOUSE)” to use as a comparison to the subject. The County explains that it has created the term and classification “(WAREHOUSE)” to apply to the subject because, in its opinion, none of the terms ordinarily used or defined by appraisal organizations, such as “warehouse,” “(X) warehouse,” “(X) warehouse,” or “(X) warehouse,” are applicable to the subject property.

To support its creation of a new classification, the County explains that the subject’s (PORTION REMOVED). It also explains that goods are usually stored at distribution warehouses for a significant period of time, whereas at the subject property, %%%% of the goods are transferred within (#)

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hours of their receipt. For these reasons, the County concluded that the subject property needed its own unique classification.

The Petitioner does not contest that a cost approach to value alone, without an adjustment for obsolescence, would result in the value that the County has derived in its appraisal. However, the Petitioner argues that it is inappropriate for the County to create a term that applies only to the subject in order to disregard any obsolescence that the subject may experience that would be shown by a sales comparison approach or an income approach. The Petitioner contends that consideration of these approaches will demonstrate that the subject property experiences obsolescence due to certain features built into the subject property that would not be recouped in the market if the subject were leased or sold.

The County appears to recognize that certain features of the property would result in functional obsolescence if the subject property were sold or leased in the Salt Lake County market as a distribution warehouse. For example, the County states in its exhibits that the subject's (WORDS REMOVED) is too specialized "to attract 'major players'" because " (WORDS REMOVED) At the hearing, the County explained (WORDS REMOVED).

The County also recognizes that the subject is unique because: 1) (PORTION REMOVED) 2) (PORTION REMOVED) 3) (PORTION REMOVED); and 4) (PORTION REMOVED).

Regardless of its unique features, however, the County argues that the subject was built to meet the specific needs of the Petitioner. For this reason, the County contends that the Commission should disregard any functional obsolescence that could exist if the subject is compared to other properties and should, instead, determine a "value in use" for the subject property. The County proffers that the subject property's "value in use" is equivalent to its cost approach value, as this value approximates the value the Petitioner was willing to pay to develop the property less than a year prior to the lien date.

The County also contends that a “value in use” approach is appropriate because The Appraisal Institute, in its *Appraisal of Real Estate*, 12th Edition at p. 25, states that “[t]he highest and best use of a special purpose property as improved is probably the continuation of its current use if that use remains viable.” Because the continuation of the Petitioner’s current use of the property is viable, the County argues that the subject property must be assessed at its “value in use” in order to value the property at its “highest and best use.”

Petitioner’s Information. To counter the County’s argument that an appraisal of the subject property should only consider a cost approach, the Petitioner submits a letter from APPRAISER A. APPRAISER A, an appraiser with the COMPANY A of CITY 1, Utah, expresses his opinion about the appropriate methodology to use to appraise the subject property, as follows in part:

It appears to me that there is adequate data to value the property using both the Sales Comparison and Income Approaches to value. There are some challenges in that this building is very large and directly similar comparable information may not be available, however, the data appears to be adequate. All properties have some unique characteristics. It is the job of the appraiser to analyze these characteristics in relation to the data and make adjustments to arrive [at] a reasonable value conclusion. The subject should not be considered a special use property.

The exclusive use of the cost approach in valuing any property is highly questionable. All properties suffer from depreciation in some form or another. It is extremely difficult, if not impossible, to measure functional and/or economic obsolescence without using improved sales comparables or income analysis. Without market transactions of similar properties, the result is simply the reporting of the building cost and I would hesitate to refer to it as **market value**. It is not uncommon for properties to be improved in a way that results in a market value conclusion that is lower than the cost. This is especially true when unique characteristics are incorporated into the construction. It is imperative to develop a Sales Comparison or Income Approach to produce a reliable market value conclusion.

The Petitioner also proffers an appraisal prepared by PETITIONER REP. 2, an MAI appraiser, that includes a sales comparison approach and an income approach to value. PETITIONER REP. 2 specifically states in his appraisal, however, that “[a]t the specific request of the client,” he only considered the

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sales comparison approach and income approach to estimate the subject's value. As a result, PETITIONER REP. 2 did not consider the cost approach and what effect its consideration would have, if any, on his final determination of value. With this limitation, PETITIONER REP. 2 concluded that the subject property's (#) square foot building and the (#) acres of land supporting it had a fair market value of \$\$\$\$ as of the lien date. To this value, the Petitioner added \$\$\$\$ for the value of the (#) acres of excess land (calculated at the \$\$\$\$ per square foot price at which the entire (#) acres was purchased on DATE) to arrive at a total value of \$\$\$\$\$. The Petitioner requests that the Commission establish the subject's value at this amount.

In his appraisal, PETITIONER REP. 2 stated that the subject is unique (PORTION REMOVED). To illustrate, PETITIONER REP. 2 included a chart showing five "true transit warehouse projects," which show an average size of (#) square feet and an average width of only (#) feet. The largest of the projects shown on the chart is (#) square feet in size, and the largest width of any of these projects is (#) feet. PETITIONER REP. 2 explained that because of their smaller widths, most transit warehouses only allow for the transfer of goods from one truck to another, whereas the width of the subject property allows for storage as well. For these reasons, PETITIONER REP. 2 concluded that the subject property is a large distribution warehouse, stating that "[i]t is clear that the subject does not fit into the parameters of the Salt Lake County transit warehouse market."

RESPONDENT REP. 2 Sales Comparison Approach. PETITIONER REP. 2 compared the subject to comparables he concluded to "have reasonably similar amenities and overall market appeal to that of the subject." PETITIONER REP. 2 compared the subject to six sales that sold at prices ranging between \$\$\$\$ and \$\$\$\$ per square foot and that he adjusted to prices ranging between \$\$\$\$ and \$\$\$\$ per square foot. Given these comparables, PETITIONER REP. 2 concluded that the (#) square foot subject and the (#) acres of land would have a value of \$\$\$\$ per square foot, which equates to approximately \$\$\$\$\$.

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The two sales comparables that are (#) and (#) square feet in size and that sold for \$\$\$\$ and \$\$\$\$ per square foot, respectively, appear too dissimilar in size to be persuasive. The remaining four comparables, however, are of similar size to the subject property, as they range from (#) to (#) square feet in size. These four comparables all sold for prices at \$\$\$\$ per square foot or less and adjusted to prices that support PETITIONER REP. 2's conclusion of value.

The County proffered pictures to show that the four remaining comparables look different from the subject. It also included the characteristics of the comparables to show that they were different from the subject in the size of their (PORTION REMOVED). The County also stated that Comparable #5 should not be considered because its research showed the sale to be an "intercompany" transfer, not an arm's-length sale.

The Commission notes that the four comparables are similar to the subject in size and appear to be used as warehouses or transit or distribution warehouses. The Commission also notes that PETITIONER REP. 2 made adjustments, as he thought appropriate, for the differences that the County pointed out and that no information was proffered to show that PETITIONER REP. 2's adjustments were incorrect. However, with the exception of Comparable #5, which may or may not represent fair market value, and Comparable #6, which is too small to be persuasive, all of the comparables were at least four years old when they sold, while the subject was only a few months old as of the lien date.

PETITIONER REP. 2's Income Approach. To determine a market lease rate for the subject property, PETITIONER REP. 2 compared the subject to six properties that had been leased and one property that was offered for lease. The comparables, which ranged in size from (#) to (#) square feet, show lease prices ranging between \$\$\$\$ and \$\$\$\$ per square foot (NNN). Two of the comparables are smaller than (#) square foot. The four remaining comparables are larger, and two are similar in size to the subject, as they are (#) and (#) square feet in size, respectively. PETITIONER REP. 2 adjusted the comparables to prices

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ranging between \$\$\$\$ and \$\$\$\$ per square foot and determined a market lease rate of \$\$\$\$ per square foot for the subject. When PETITIONER REP. 2 applied this rate to the subject's (#) square feet, he derived a potential gross income ("PGI") of \$\$\$\$ for the subject.

To this PGI, PETITIONER REP. 2 applied a %%% vacancy rate, a %%% management fee expense, and a %%% maintenance expense to arrive at a net operating income ("NOI") of \$\$. He then applied a %%% capitalization rate to NOI to derive a value of approximately \$\$\$\$ for the subject building and the (#) acres he appraised, using the income approach.

The County again proffered pictures and the characteristics of PETITIONER REP. 2's lease rate comparables to show that they look different and have different features from the subject. The Commission notes that at least two comparables are similar to the subject in size and appear to be used as distribution warehouses. The Commission also notes that PETITIONER REP. 2 made adjustments he thought appropriate for the differences that the County pointed out and that no information was proffered to show that PETITIONER REP. 2's adjustments were incorrect. However, all of the comparables were at least four years old when they were leased, while the subject was only a few months old as of the lien date.

The County also states that the %%% capitalization rate PETITIONER REP. 2 used is too high. The County explains that it talked to the owners of the COMPANY B Building, which is PETITIONER REP. 2's sales comparison Comparable #1, and was told that it sold at a capitalization rate of %%%. In addition, the County states it calculated a %%% band of investment capitalization rate. None of this information, however, was proffered for review. In his appraisal, PETITIONER REP. 2 included a page of capitalization rate comparables that show rates ranging between %%% and %%% for sales of "industrial related office warehouses" that sold during 2005 and 2006. Only six of these sales were for properties that were in excess of (#) square feet in size. The rates for these six sales were %%%, %%%, %%%, %%%, and %%%, respectively, which suggests that a %%%

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capitalization rate for the subject may be too high. Were the Commission to conclude that an %%%% capitalization rate is more appropriate and to apply it to the NOI PETITIONER REP. 2 derived, his income approach value would increase from \$\$\$\$ to approximately \$\$\$\$.

PETITIONER REP. 2's Reconciliation. PETITIONER REP. 2 reconciled a final value for the subject's building and (#) acres by giving equal weight to the estimates he derived from the sales comparison approach and income approach. If his \$\$\$\$ sales comparison approach value and the revised \$\$\$\$ income approach value are given equal weight, a value of \$\$\$\$ is derived for the subject building and the (#) acres of land. Adding the excess land value of \$\$\$\$ that the Petitioner proposed would result in a total value of approximately \$\$\$\$ for the subject property.

Analysis. The Commission is not persuaded that either party's approach is necessarily correct. First, the Commission finds the County's creation of a unique classification for the subject property to be unpersuasive. In addition, it does not find that the subject property is a special use property. Furthermore, even were the subject to be a special use property, the Commission is not convinced that the cost approach alone is always adequate to determine its fair market value.

In fact, the Commission has previously determined that a special use property should be valued at its "value in exchange," if that value is different from its "value in use." In its Final Decision in *xxxxxx v. Board of Equalization of RURAL COUNTY*, Appeal Nos. 03-1417, 04-1366 & 05-1470 (February 27, 2006), the Commission considered a unique industrial building that was designed for a special use, the repair of large mining equipment. In that case, the Commission considered expert testimony from a professor who explained "that value in use is always higher than value in exchange" and concluded that it "must determine the value for the property based on an exchange value." Although the Commission did not reject RURAL COUNTY's appraisal on the basis that it only included a cost approach, it found that, in that instance, the cost approach alone "failed to fully account for obsolescence."

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The subject property at issue in this matter was only a few months old as of the 2006 lien date, whereas the special use property in the RURAL COUNTY case had an effective age of at least seven years when the Commission considered its value. Perhaps the fact that the subject property is new would result in a cost approach alone being sufficient to value the subject property. However, without the County considering the subject's "value in exchange," the Commission is not persuaded that its appraisal, which it admits to be a "value in use" appraisal, is sufficient evidence for the Commission to conclude that the value established by the County BOE is incorrect.

Nor is the Commission persuaded by the Petitioner's evidence that the subject's improvements, though newly built, immediately experienced such obsolescence that their value is 40% less than their cost to build. Were the subject the same age as the most similar comparables found in PETITIONER REP. 2's appraisal, perhaps the Petitioner's appraisal would be more persuasive to show that such a large amount of obsolescence has occurred. However, the Commission is not convinced that a new property, such as the subject, would experience the amount of obsolescence shown in PETITIONER REP. 2's appraisal without the appraiser addressing and explaining this point in a more convincing manner. Furthermore, PETITIONER REP. 2, at the Petitioner's instructions, does not address the cost approach and its effect, if any, on a final reconciliation of value for the subject property. Without such evidence, the Commission is not convinced that the Petitioner's appraisal considers all aspects concerning the subject property. For these reasons, the Commission does not find the Petitioner's evidence sufficient for it to conclude that the value established by the County BOE is incorrect.

For these reasons, the Commission rejects the County's request to increase the subject's value and the Petitioner's request to decrease the subject's 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

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.

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Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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