

07-0596
LOCALLY ASSESSED PROPERTY
04-30-07

BEFORE THE UTAH STATE TAX COMMISSION

SALT LAKE COUNTY ASSESSOR,

Petitioner,

v.

BOARD OF EQUALIZATION OF SALT
LAKE COUNTY, UTAH, EX REL
PROPERTY OWNER,

Respondent.

INITIAL HEARING ORDER

Appeal No. 07-0596

Parcels: ##### -1, ##### -2

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

Judge: Phan

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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Appeals Supervisor, Salt Lake County
PETITIONER REP 2, Appraiser, Salt Lake County

For Respondent: No One Appeared

For ex rel Party: PROPERTY OWNER REP

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on December 3, 2007. Petitioner is appealing the assessed value as established for the subject property by the Salt Lake County Board of Equalization. The lien date at issue is January 1, 2006.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any 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 by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject property is comprised of both parcel no. ##### -1 and parcel no. ##### -2 and is located at ADDRESS, CITY, Utah. The County Assessor’s Office had originally set the combined value for both parcels of the subject property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization reduced the combined value to \$\$\$\$\$. Petitioner, the

Salt Lake County Assessor (the “County”), filed this appeal arguing that the value set by the County Board of Equalization was too low, that the combined value should be raised to \$\$\$\$\$. PROPERTY OWNER, the property owner and ex rel party (the “Property Owner”) in this matter, requested value revision as set by the Board of Equalization. The subject property combined consists of 18.83-acres of land improved with a single tenant, corporate headquarters office, and warehouse building that was constructed in 2001. The improvements have 239,027 square feet with about 21% of that finished as office area or intended to be office area as the business expands. At this point there is more office area than is used by the property owner. The building was constructed by the owner to serve as its corporate headquarters and this is apparent in the design and quality of the finish. The building has a curved façade at the entrance, a lounge with full service bar and covered balcony, a retail store, a fitness center, granite flooring and finishes. Additionally there are some amenities that are not typical for office warehouse space. There is 43,780 square feet of cooler/warehouse space. There is a covered receiving dock, a rail spur to the building and a service garage. With the two parcels combined there is excess land. Both Petitioner and the property owner agreed to some extent that there was super adequacy in the improvements for this property.

The County submitted an appraisal prepared by PETITIONER REP 2, Certified General Appraiser. He considered all three approaches, concluding the cost approach value was \$\$\$\$\$, the sales comparison approach was \$\$\$\$\$ and the income approach \$\$\$\$\$. He reconciled the three values to arrive at his estimate of \$\$\$\$\$.

In the cost approach PETITIONER REP 2 concluded that the value of the land was \$\$\$\$\$ and the cost to construct the improvements was \$\$\$\$\$. He then added 10% to the improvement cost for entrepreneurial profit. However, recognizing the super adequacy of this property he subtracted 25% of the land and improvement value for the obsolescence. This resulted in his cost conclusion of \$\$\$\$\$.

In the sale comparison approach, PETITIONER REP 2 considered six sales that had sold for per square foot prices ranging from \$\$\$\$\$ to \$\$\$\$\$ a square foot. It was his conclusion from these sales that the value of the subject property would be higher than any of the actual sale prices, at \$\$\$\$\$ per square foot. Which resulted in his conclusion of \$\$\$\$\$. Of his comparables, the most similar was Sale 2. This building had been constructed as an owner occupied corporate headquarters/warehouse for Gateway Computers in 1998, which then sold the building in December 2004. Like the subject it had significant finished office area, was similar in size and had excess land. It had sold for \$\$\$\$\$ per square foot. PETITIONER REP 2 had made an adjustment of 20% for obsolescence due to the fact that it had more office space than was needed by the purchaser and the purchases had to reconstruct the storage system in the warehouse. The property owner pointed out that the subject has excess office area and argued that the 20% adjustment was unwarranted because this was how the subject would sell if on the market without a tenant.

In his income approach, PETITIONER REP 2 considered rents from seven comparables and took the average adjusted rate, which resulted in a lease rate of \$\$\$\$\$ per square foot. One of the comparables, No. 7, had significant custom office finish and rented for \$\$\$\$\$ per square foot, significantly higher than any of the other comparables. All other comparables had minimal office finish compared to the subject. His conclusion from this approach was a value of \$\$\$\$\$.

The Property Owner submitted an appraisal that had been prepared for the hearing by APPRAISER A, Certified General Appraiser that indicated a value of the property for the lien date of \$\$\$\$\$. Petitioner had submitted another appraisal that indicated a value of \$8,900,000 prepared by APPRAISER B, MAI, and a limited scope appraisal prepared by APPRAISER C, MAI who concluded a value of \$\$\$\$\$ from the income and \$\$\$\$\$ from the sales. It was APPRAISER C's report and other information that had been the basis for the County Board of Equalization's reduction of value.

APPRAISER C's study was generally based on comparables that were significantly inferior to the subject. APPRAISER B determined a market approach of \$\$\$\$ from five sales, which had sold for a price per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$ and were generally inferior to the subject. However, after making adjustments his indicated range for the subject was from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot and his conclusion was based on \$\$\$\$\$ per square foot. Although there is some super adequacy with the subject and would likely not sell for what it cost to build, it is not going to sell for less than the inferior properties.

In his income approach, APPRAISER B relied on five rent comparables and one listing. These properties were again generally inferior to the subject, leasing for prices from \$\$\$\$ to \$\$\$\$\$ per square foot. APPRAISER B concluded a value of \$\$\$\$\$ per square foot for the subject. The Commission concludes that there were better comparables for this property and APPRAISER B's value is understated.

The appraisal prepared by APPRAISER A also relied generally on inferior comparables. In his sales summary, APPRAISER A did consider the same COMPANY Asale, as had the County, which was a good comparable. However, none of his other sales or lease comparables had the custom office finish of the subject. He argued that the County should have looked for sales where there was no lease in place and that entrepreneurial profit should not be added to a cost approach where there was built-in obsolescence due to super adequacy.

The Commission does consider this APPRAISER A appraisal and arguments as well as the information from the APPRAISER B appraisal. However, from the evidence presented, the Commission concludes that the County has presented the better comparables in this matter. Neither APPRAISER A nor APPRAISER B included photographs of their comparables and the photographs of the APPRAISER A or APPRAISER B comparables that were submitted by the County as rebuttal indicated APPRAISER B and APPRAISER A included inferior properties. The subject building has good quality finishes and superior amenities in regard to most of the comparables presented in this matter and would not sell or lease for less than inferior

properties. PETITIONER REP 2' lease comparable no. 7, which was to COMPANY B for \$\$\$\$ per square foot including the tenant improvements, had substantial custom office finish, much more similar to the subject and indicated the highest lease rate, yet PETITIONER REP 2 averaged all leases to reach his conclusion of \$\$\$\$ per square foot.

Although PETITIONER REP 2 determined a higher value from his market approach than his income approach, the Commission would have placed more weight on Sale 2, the COMPANY A building in his market approach. This was a good comparable considering office finish and excess land. It tended to indicate that these factors may add less to the value in a sale than would be indicated in the income approach. For these reasons the Commission agrees with PETITIONER REP 2's more conservative averaging of the lease rates in the income approach rather than placing more weight on the lease of the most comparable property, the COMPANY B building. The value indicated for the subject from the COMPANY A sale was substantially lower than the income approach value, even if the 20% obsolescence adjustment was considered, which arguably may have been misplaced. For this reason the Commission gives less weight to PETITIONER REP 2's market conclusion and determines the weight of the evidence supports the value of \$\$\$\$\$, which is his income conclusion.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the combined value of the subject parcels as of January 1, 2006, is \$\$\$\$\$. The County is to allocate this value between the two parcels. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 _____, 2008.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

CONCURRENCE

Although I agree in the conclusion reached by my colleagues in this matter, I would point out to the parties that the treatment of the excess land in both the PETITIONER REP 2 and APPRAISER A appraisals appeared inconsistent with proper appraisal techniques. It is inappropriate to adjust the lease rate for excess land for purposes of determining a market rate from which to develop the potential gross income. A correct technique would be to determine a market value for the excess land using land sales and add that to the capitalized value. Since neither party did this, and it is clear that there is excess land that adds to value, I accept the majority's valuation for purposes of this appeal.

Marc B. Johnson
Commissioner

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