07-0935
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2006
DATE SIGNED: 6-2-2008
COMMISSIONERS: P. HENDRICKSON, B. JOHNSON, D. DIXON
ESCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 07-0935 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2006 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:	REPRESENTATIVE-1 FOR TAXPAYER, Attorney REPRESENTATIVE-2 FOR TAXPAYER
For Respondent:	RESPONDENT-1, Salt Lake County Deputy District Attorney RESPONDENT-2 RESPONDENT-3, from 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 27, 2008.

At issue is the fair market value of the subject property as of January 1, 2006. The subject property is a STORE located at SUBJECT ADDRESS in CITY-1, Utah. For the 2006 tax year, the property was assessed at $$$$$, which the Salt Lake County Board of Equalization ("County BOE") sustained. TAXPAYER (the "taxpayer") asks the Commission to reduce the subject's value to $$$$$, while the County asks the Commission to reduce the subject's value to $$$$$.

APPLICABLE LAW

Utah Code Ann. §59-2-102(12) defines "fair market value" to mean "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."

UCA §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 STORE that was built inYEAR. THE RETAIL STORE is #####-square feet in size, and the property contains ##### parking stalls. The subject is located on A PARTICLAR PROPERTY CONDITION of two roads with high traffic counts, #####-South and ROAD. In addition to the general sales floor, THE RETAIL STORE also contains a manager's office, training room, walk-in cooler/freezer, general storage, pharmacy, employee rooms, two restrooms and mechanical areas. THE RETAIL STORE also has two drive-thru bays that service the pharmacy.

THE RETAIL STORE is unique in the retail/(X) store arena because it locates its stores on PARTICULAR PROPERTY CONDITION with excellent access, locations that are relatively expensive and on which gas stations, convenience stores and fast-food restaurants are more commonly found. Furthermore, THE RETAIL STORES, including the subject property, are build-to-suit and leased to THE RETAIL STORE by the owner. The subject was leased to THE RETAIL STORE in YEAR for $$$$$ per square foot, triple net. The lease term is 20 years without rent escalation, with eight 5-year options. Both parties state that these leases, which are in effect for 60 years, are unique and result in high market rents for the first portion of the lease period. Both parties have determined that valuing the subject property based on its current lease rate would result in a value that exceeds the subject's fee simple fair market value.

The taxpayer proffers that it is unlikely that THE RETAIL STORE will vacate the subject property or default on its lease in the foreseeable future. Nevertheless, the taxpayer contends that THE RETAIL STORES include design features and amenities that are not important to the broader retail market or even the general pharmacy market. As a result, the taxpayer argues that should THE RETAIL STORE vacate the subject property, there would be little or no demand for the subject at the original cost to develop the property and that it would likely rent to a less desirable tenant at a much lower rate. The taxpayer argues that this circumstance must be considered in the valuation process in order to determine "the amount at which [the subject] property would change hands between a willing buyer and a willing seller." Otherwise, it argues, intangible value associated with the subject's current occupation by THE RETAIL STORE will be impermissibly included in the value.

The County, on the other hand, contends that the possibility of THE RETAIL STORE leaving the subject property in the future does not impact the subject's fair market value to the extent argued by the taxpayer. The County points out that the subject property is still relatively new and is currently leased by a good quality, first-generation tenant, specifically THE RETAIL STORE. As a result, the County contends that the subject is occupied as and in demand as a first-generation property and is not subject to the diminution in value experienced by some second-generation properties. The County contends that the taxpayer wants the Commission to value the property as though it is to be rented or sold as a second-generation property, which would ignore the subject's actual circumstances as of the lien date and the foreseeable future.

Parties' Appraisals. The taxpayer proffers an appraisal prepared by REPRESENTATIVE-2 FOR TAXPAYER, in which he estimated the subject's fee simple fair market value to be $$$$$ as of the lien date. REPRESENTATIVE-2 FOR TAXPAYER determined this value after deriving values of $$$$$ with the cost approach, $$$$$ with the income approach and $$$$$ with the sales approach. In correlating a final value of $$$$$, REPRESENTATIVE-2 FOR TAXPAYER gave no weight to the cost approach. However, because his income and sales approaches showed very similar values, REPRESENTATIVE-2 FOR TAXPAYER established a final value of $$$$$ that was between these values. REPRESENTATIVE-2 FOR TAXPAYER stated that it was difficult to quantify the adjustments needed for the comparables he used in his various approaches. As a result, he indicated whether each comparable was superior or inferior to the subject for various factors without indicating the magnitude of any needed adjustment.

The County proffers an appraisal prepared by RESPONDENT-2, in which he estimated the subject's fee simple fair market value to be $$$$$ as of the lien date. RESPONDENT-2 determined this value after deriving values of $$$$$ with the cost approach, $$$$$ with the income approach and $$$$$ with the sales approach. When correlating a final value, RESPONDENT-2 gave primary weight to the income approach. When adjusting the comparables he used in his various approaches, RESPONDENT-2 quantified his adjustments in order to show the different magnitudes of each adjustment.

Cost Approaches. In his appraisal for the taxpayer, REPRESENTATIVE-2 FOR TAXPAYER concluded that the subject's land had a value of $$$$$ per square foot, which equates to approximately $$$$$ for the #####-acre parcel. REPRESENTATIVE-2 FOR TAXPAYER also determined that the subject's depreciated improvement cost was $$$$$. Adding these costs results in a total cost estimate of value of approximately $$$$$.

RESPONDENT-2 however, concluded that the subject's land had a value of $$$$$ per square foot, which equates to $$$$$ for the #####-acres. RESPONDENT-2 determined that the subject's depreciated improvement cost is $$$$$. Adding these costs results in a total cost estimate of value of approximately $$$$$.

The overwhelming difference between the appraisers' cost estimates concerned the subject's land value. For the taxpayer, REPRESENTATIVE-2 FOR TAXPAYER determined a value for the subject's land by comparing it to five comparables that sold between $$$$$ and $$$$$ per square foot. After comparing the subject's land to the comparables, he concluded that the subject's land value was $$$$$ per square foot. The County proffered aerial view photographs of each of REPRESENTATIVE-2 FOR TAXPAYER's comparables and had RESPONDENT-2 proffer his opinion about each comparable. Based on this information, it appears that most of REPRESENTATIVE-2 FOR TAXPAYER's comparables are significantly inferior to the subject in terms of location and access.

For the County, RESPONDENT-2 determined a value for the subject's land by comparing it to five comparables that sold between $$$$$ and $$$$$ per square foot. After adjusting each comparable, he estimated the subject's land value to be $$$$$ per square foot. The County proffered aerial view photographs of each of RESPONDENT-2 comparables, as well. Based on this information and the testimony proffered by RESPONDENT-2 and REPRESENTATIVE-2 FOR TAXPAYER, the Commission is convinced that RESPONDENT-2 are more similar to the subject property and that his $$$$$ per square foot value is the more convincing estimate of value for the subject's land. As a result, the Commission finds the County's cost approach to be more convincing than the taxpayer's.

Income Approaches. For the taxpayer's income approach, REPRESENTATIVE-2 FOR TAXPAYER used five lease comparables to determine a fee simple lease rate of $$$$$ per square foot, triple net. To the potential gross income derived with this rate, REPRESENTATIVE-2 FOR TAXPAYER applied a 2% vacancy and credit loss, a 2% management expense and a 2% reserves expense to arrive at a net operating income ("NOI") of $$$$$. REPRESENTATIVE-2 FOR TAXPAYER concluded that a reasonable capitalization rate to apply to NOI would be 7.7%, which results in a value of approximately $$$$$.

For the County's income approach, RESPONDENT-2 used five lease comparables to determine a fee simple lease rate of $$$$$ per square foot, triple net. To the potential gross income derived with this rate, RESPONDENT-2 applied a 3% vacancy and credit loss, a 2% management expense and a 2% reserves expense to arrive at a NOI of $$$$$. RESPONDENT-2 concluded that a reasonable capitalization rate to apply to NOI would be 7.25%, which results in a value of approximately $$$$$.

The appraisers' income approaches primarily differed as to their determinations of: 1) the appropriate fee simple lease rate; and 2) the appropriate capitalization rate.

Rental Rate. For the taxpayer, REPRESENTATIVE-2 FOR TAXPAYER attempted to find comparables that would show the market value of the subject, should it have been placed on the market for rent or sale as of the lien date. REPRESENTATIVE-2 FOR TAXPAYER indicated that finding such comparables were difficult because the size of the subject property is atypical for businesses that generally locate on busy PARTICULAR PROPERTY CONDITION and because the shopping centers near the subject do not have high quality tenants to attract shoppers. Subject to this approach, REPRESENTATIVE-2 FOR TAXPAYER derived a $$$$$ per square foot lease rate.

For the County, RESPONDENT-2 explained that he tried to find a range of comparables that would estimate the value of subject property subject to its being in demand by a high-quality tenant as of the lien date, not its value were it to be leased as a second-generation property. Subject to this approach, RESPONDENT-2 derived a $$$$$ per square foot lease rate.

The Commission prefers RESPONDENT-2 approach. First, the taxpayer admits that it is unlikely that THE RETAIL STORE will vacate the subject property in the near future. Accordingly, the likelihood that the subject property will be sold or rented as a second-generation property with diminished demand in the near future is, at best, minimal. To value the property in this manner as of the lien date, as the taxpayer supports, would ignore the subject's current use and the likelihood that this "higher" use will continue for many years. RESPONDENT-2 approach appears to better take into account all current and future conditions that may affect the subject's fair market value. Furthermore, had the subject property theoretically been offered for sale or lease as of the lien date, it also appears that there was a demand by THE RETAIL STORE to continue leasing the property, a factor that the taxpayer's approach appears to ignore.

Capitalization Rate. For the taxpayer, REPRESENTATIVE-2 FOR TAXPAYER derived a capitalization rate of 7.7%. RESPONDENT-2 on the other hand, derived a capitalization rate of 7.25%. Although both parties provided comparables that would support their respective rates, the Commission believes that RESPONDENT-2 rate better reflects the current circumstances of the subject; i.e., that as of the lien date, it was currently and for the foreseeable future in demand by a good-quality, first-generation tenant. In addition, the Commission notes that a similar property, A STORE-2, sold at a 7% capitalization rate in August 2005.[1]

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1 Testimony and evidence shows that RETAIL STORE-2 sold for $$$$$ while RETAIL STORE-2 lease was still in place. RETAIL STORE-2 lease appeared to be in excess of $$$$$ per square foot (RESPONDENT-2 appraisal, p. 28, which shows NOI per square foot to be $$$$$). Additional information would be needed to determine whether the sales price was representative of the property's fee simple value of its leased fee value (i.e., whether or not the lease in place at the time of sale represented market value lease rates). However, the property is now vacant and has been marketed for $$$$$ per square feet for two years

Based on the foregoing, the Commission finds RESPONDENT-2 income approach more convincing than REPRESENTATIVE-2 FOR TAXPAYER's.

Sales Approaches. For the taxpayer, REPRESENTATIVE-2 FOR TAXPAYER compared the subject property to five sales that occurred in 2005 and 2006. The five comparables sold for prices ranging between $$$$$ and $$$$$ per square foot, which included STORE-3, STORE-4, two second-generation stores, and RETAIL STORE-2 referred to earlier. After adjusting the comparables, REPRESENTATIVE-2 FOR TAXPAYER estimated the subject's price per square foot at $$$$$, which equates to approximately $$$$$.

For the County, RESPONDENT-2 compared the subject property to four sales, three of which occurred in 2005 and one in 2001. The four comparables sold for prices ranging between $$$$$ and $$$$$ per square foot, which included RETAIL STORE-2, RETAIL STORE-4, RETAIL STORE-5, and THE RETAIL STORE located in CITY-2. After adjusting the comparables, RESPONDENT-2 estimated the subject's price per square foot at $$$$$, which equates to approximately $$$$$.

For reasons discussed earlier, the Commission finds the County's sales approach preferable. RESPONDENT-2 appears to better consider the subject's circumstances as of the lien date, specifically that the property was in demand by a good-quality tenant and that such demand would remain in place for the foreseeable future.

Conclusion. The Commission finds RESPONDENT-2 appraisal for the County preferable to REPRESENTATIVE-2 FOR TAXPAYER's appraisal for the taxpayer. The Commission is primarily concerned that the taxpayer does not attribute value to the subject's circumstances as of the lien date, specifically that it was leased to a good, first-generation tenant that is expected to remain in the property for the

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without success, which suggests a notable diminution in value for many stores whose first-generation tenants have vacated or may vacate in the near future.

foreseeable future. The Commission does not, as the taxpayer contends, believe that a value that recognizes these circumstances includes intangible value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property should be reduced to $$$$$ for the 2006 tax year. The Salt Lake County Auditor is ordered to adjust the subject's value in accordance with this decision. 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 ________________________, 2008.

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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 ________________________, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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