08-0347
LOCALLY ASSESSED PROPERTY
SIGNED 07-16-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SUMMIT COUNTY, UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 08-0347 Parcel Nos. ##### -1, ##### -2 Tax Type: Property Tax/Locally Assessed Tax Year: 2007 Judge: Jensen

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, in accordance with 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:
R. Bruce Johnson, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP, Taxpayer
For Respondent: RESONDENT REP 1, Deputy Summit County Attorney
RESPONDENT REP 2, for Summit County
RESPONDENT REP 3, for Summit County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 12, 2009. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Taxpayer") is appealing the assessed value of real property as determined by the Summit County Board of Equalization (the "County") for the lien date January 1, 2007.

2. The property at issue in this appeal consists of two parcels: One is listed as parcel no. ##### -1, a 1.63-acre parcel improved with a gas station and convenience store ("Parcel 1"); the other is listed as parcel no.

-2, a 1.89-acre parcel without significant improvements ("Parcel 2"). The parcels at issue adjoin each other and are located at ADDRESS in Summit County Utah. At hearing, the parties addressed a third parcel, listed as parcel no.##### -3, a .29-acre parcel without significant improvements (Parcel 3). Although both parties discussed Parcel 3 and addressed its value in their property valuations, the Commission has no petition or other request for appeal that would include Parcel 3. Further references to the subject property in this decision shall include Parcel 1 and Parcel 2 along with improvements on these parcels, but shall not include Parcel 3.

3. The improvements have a gross area of 4,039 square feet. This includes 2,599 square feet of convenience store area and 1,440 square feet of lounge and office area. The improvements are block and metal-framed building and have an original construction date of 1971. The improvements have been updated but have not had a major remodeling.

4. The County Assessor had set the value of the Parcel 1, as of the lien date, at $$$$$. The County Assessor had set the value of the Parcel 2, as of the lien date, at $$$$$. The county board of equalization sustained these values. The Taxpayer requests that the Commission reduce the value of Parcel 1 from $$$$$ to $$$$$ and the value of Parcel 2 from $$$$$ to $$$$$. The County asks that the Commission sustain the values as determined by the board of equalization.

5. The Taxpayer provided evidence of a fuel spill and contamination problems with the subject property. The Taxpayer indicated that, to date, he had spent approximately $$$$$ in clean-up costs and that a governmentally created insurance program has spent just under $$$$$ in efforts to clean soils and groundwater to lessen the effect of that spill.

6. The Taxpayer provided a valuation of the subject property, which valued the subject property and Parcel 3 at a total of negative $$$$$ as of the lien date.

7. The Taxpayer's valuation of the subject property included a cost approach to valuation. To value the site for the subject property, the Taxpayer relied on the sales of four comparable improved properties with sale dates from August 2005 to May 2007. The four comparable properties were vacant land in the general area of the subject property. The four comparable properties had lot sizes of 7.47 acres, .86 of an acre, .96 of an acre, and 6.98 acres and had unadjusted selling prices of $$$$$, $$$$$, $$$$$, and $$$$$. These sales equated to prices of $$$$$, $$$$$, $$$$$, and $$$$$ per square foot of land and $$$$$, $$$$$, $$$$$, and $$$$$ per acre. The Taxpayer calculated mean prices of $$$$$ per square foot and $$$$$ per acre for all four comparable properties. However, at hearing, the Taxpayer requested that the Commission disregard the sale at $$$$$. The Taxpayer calculated new mean selling prices without the sale at $$$$$, which he indicated were

$$$$$ per square foot and $$$$$ per acre. Using these figures, the Taxpayer valued Parcel 1 at $$$$$ for 71,128 square feet at $$$$$ per square foot.[1] The Taxpayer calculated the value of Parcel 2 at $$$$$ for 82,328 square feet at $$$$$ per square foot. The Taxpayer also valued Parcel 3, a parcel not part of this appeal, at $$$$$ for 12,632 square feet at $$$$$ per square foot. To value the improvements, the Taxpayer provided a Square Foot Cost Estimate Report indicating that the replacement cost of a new building was $$$$$, or $$$$$ per square foot for the 4,039 square feet of improvements. The Taxpayer identified the source of the building cost data as SOURCE. The building cost estimate indicated that it reflected new building costs as of January 1, 2007 in the Salt Lake City market. The Taxpayer did not provide additional market data, although a note on the estimate itself indicated that costs were "derived from a building model with basic components" and that "[s]cope differences and market conditions can cause costs to vary significantly." The Taxpayer indicated reliance on figures supplied by Summit County for other components of building, such as hard surface areas, canopies, and concrete. From building costs of $$$$$, hard surface costs of $$$$$, auto canopy costs of $$$$$, diesel canopy costs of $$$$$, and cost for concrete of $$$$$, the Taxpayer deducted 88% for depreciation of structures and 66% for depreciation of hard surface costs and concrete. The Taxpayer's representative explained that the building had lived long beyond its expected life and that it had five years of useful life remaining. This yielded a net building value of $$$$$. To this, the Taxpayer added $$$$$ for fuel equipment, calculated on the basis of $$$$$ for replacement and $$$$$ depreciation. For the cost estimate for petroleum equipment, the Taxpayer excluded costs for sales tax, concrete, asphalt, electrical wire and cable for power communication, crane for unloading and setting of tanks, and dewatering for tank installation. The Taxpayer arrived at a final value of $$$$$ by the cost approach.

8. The Taxpayer completed a sales comparison approach to value for the subject property. The Taxpayer relied on the sales of six comparable improved properties with sales dates from August 2005 to March 2008. The six comparable properties were in CITY 2, Utah, CITY 3, CITY 4, Utah, CITY 5, Utah, COUNTY 1, Utah, and CITY 6, Utah and had improvements between 1,200 and 7,459 square feet. The Taxpayer did not indicate that any of these properties had contamination issues. The improvements were constructed in 1966, 2001, 2001, 1930, and the 1970s for five of the six properties. The Taxpayer did not list a date for the improvements on the remaining property. The Taxpayer noted that the 1966 building had a major remodel in 2001. The six comparable properties had unadjusted selling prices of $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$, which equated to prices of $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$ per

[1] The Commission has rounded some of the parties' figures to the nearest whole acre or dollar.

square foot of building area. The Taxpayer then made adjustments for site quality. The Taxpayer's representative indicated that he made these adjustments on the basis of his experience in the retail sales of petroleum products but did not provide market data or otherwise support the adjustments. The Taxpayer indicated that the subject was a "C" grade site and that all of the others but one were better than the subject. Accordingly, all of these adjustments were downward. One of the sales comparables was an "E" grade site. This would be an inferior site in the Taxpayer's grading, but the Taxpayer made no adjustment to the comparable with the "E" grade. The Taxpayer did not make adjustment for site contamination. The Taxpayer's representative explained that the Taxpayer preferred to deal with contamination as a separate line item later in the valuation analysis. After making adjustments for site quality, the Taxpayer calculated a mean of the adjusted value per square foot of improvements for the comparable properties. The Taxpayer's mean was $$$$$ per square foot, but this included the 2006 assessed value for the subject property, which was not a comparable sale. The Taxpayer then multiplied the mean value of $$$$$ per square foot of improvement by 3,299 square feet for a final valuation by the sales comparison method of $$$$$. The Taxpayer's representative agreed that 3,299 was smaller than the actual square footage of the improvements at the subject property, but that he had used the lower figure because the need for renovation at the subject property rendered some of the subject's space unusable without renovation or repairs.

9. The Taxpayer provided a valuation of the subject property using an income approach to valuation. The Taxpayer made this valuation on the basis of a 2006 net income for operating the current business at the subject property. The Taxpayer indicated that the business had a 2006 net income of $$$$$. At the hearing before the Commission, the Taxpayer's representative did not provide further detail or support for this net income, but did indicate that he had previously allowed the County access to some but not all of the data it had requested to support and verify this income figure. The Taxpayer divided $$$$$ by a capitalization rate of %%%%% for a final value by the income approach of $$$$$. The Taxpayer's analysis did not include any market data to support the %%%%% capitalization rate. Rather, the report indicated that capitalization rates of %%%%% to %%%%% were typical in the petroleum business and that capitalization rates in the retail petroleum business are usually higher than other retail industries due primarily to hazardous materials handled.

10. The Taxpayer's analysis indicated that the cost approach would provide a good sense of value for newer assets. The Taxpayer selected the cost approach as the most useful valuation method for the subject property. The Taxpayer's report did not rely on the income or sales comparison approaches to value. The Taxpayer reconciled the three approaches to value at a final figure of $$$$$, without adjustment for site

contamination.

11. The Taxpayer provided an estimate to remove 17,778 cubic yards of material and replace it with new material along with new reinforced commercial concrete, asphalt replacement, backfill, and groundwater treatment for a total cost of $$$$$. The Taxpayer deducted this from the uncontaminated value of $$$$$ for a final value estimate of negative $$$$$.

12. The County presented an appraisal primarily prepared by RESPONDENT REP 3. The County's appraiser concluded that the value of the subject property plus Parcel 3, as of the lien date, was $$$$$.

13. The County's appraiser completed a cost-approach valuation for the subject property. The County's appraiser estimated land value on the basis of the sales of 36 comparable vacant properties in the area of the subject. These land sales had sale dates from May 1999 to September 2007 and sold for between $$$$$ and $$$$$ per square foot. The County's appraiser acknowledged that this was a broad range of price per square foot, and provided a highlighting of ten properties that were geographically close to the subject. These had lot sizes of 9.02, 7.47, 8.67, 4.69, 0.86, 0.85, 0.85, 0.96, 0.85, and 1.36 acres. Their selling prices per square foot computed to $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$. The Taxpayer's appraiser settled on a final value of $$$$$ per square foot, noting that the mean of all sales was $$$$$ per square foot and that the mean of the most recent sales was $$$$$ per square foot. At $$$$$ per square foot, the Count's appraiser valued Parcel 1 at $$$$$, Parcel 2 at $$$$$, and Parcel 3 at $$$$$. To this land figure, the County's appraiser added costs to build new structures on the basis of data from Marshall & Swift Valuation Service. These included $$$$$ for basic structure, $$$$$ for hard surface, $$$$$ for an auto service canopy, $$$$$ for a diesel service canopy, and $$$$$ for concrete hard surface in the diesel area for a total replacement cost of $$$$$. For depreciation on the structure, the text of the appraiser's report indicated that the County's appraiser was applying a 10-year effective age and a 35-year economic life for 15% depreciation. However, the appraiser's calculations reflected 26% depreciation for a depreciated building total of $$$$$. The appraiser added $$$$$ for the replacement cost of underground storage tanks, $$$$$ for gasoline dispensing equipment, $$$$$ for diesel dispensing equipment. This yields a total depreciated value of petroleum tanks and disposing equipment of $$$$$. This makes a total value for building and petroleum equipment of $$$$$. This total ignores depreciation on petroleum dispensing equipment. Applying the appraiser's 26% depreciation figure to these values lowers the total depreciated value to $$$$$.

14. The County's appraiser completed a sales comparison approach to value for the subject property. The appraiser relied on the sales of 12 comparable improved properties with sale dates from an undisclosed month in 1990 to March 2008. The 12 comparable properties were in CITY 2, Utah, CITY 7, Utah, CITY 3,

Utah, CITY 4, Utah, CITY 5, Utah, CITY 8, STATE 1, COUNTY 1, Utah, CITY 6, Utah, CITY 9, Utah, CITY 9, Utah, CITY 9, Utah and CITY 10 Utah and had improvements between 1,200 and 5,510 square feet. One of the properties had contamination issues present at the time of its sale. The improvements were constructed in 1966, 2001, 2001, 1930, 1967, 2000, the 1960s, 1986, 1986, and 1986 for 10 of the 12 properties. The County's appraisal did not indicate the year constructed for two of the properties. The County's appraiser did not list a date for the improvements on the remaining two properties. The County's appraiser noted that the building constructed in 1966 had a major remodel in 2000. The 12 comparable properties had unadjusted selling prices of $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$, which equated to selling prices per square foot of building area of $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$ and $$$$$. Although many of the County's comparable sales are the same ones used by the Taxpayer, the selling price per square foot is markedly different because the Taxpayer included car wash area in building size while the County's appraiser did not. The County's appraiser then made adjustments for differences between the subject property and the sales comparisons for factors such as market conditions at time of sale, location, and size. After taking these adjustments into account, some of the comparable properties were adjusted upward and some were adjusted downward. The County's appraiser calculated a mean of the adjusted value per square foot of improvements for the comparable properties of $$$$$, rounded to $$$$$. The County's appraiser then multiplied the rounded mean value of $$$$$ per square foot of improvement by 4,039 square feet for a final valuation by the sales comparison method of $$$$$, rounded to $$$$$.

15. The County's appraiser completed a valuation of the subject property by an income approach to value. The County's appraiser indicated that he attempted to gain actual income information from the Taxpayer, but that the Taxpayer refused to provide more than summary information. For that reason, the County's appraiser used market data for stabilized income streams associated with properties comparable to the subject property. The County's appraiser relied on lease information from nine comparable properties. While some of the comparable properties were in Utah, others were in other states including STATE 2, STATE 3, STATE 4, and STATE 5. The comparable properties had net operating income figures of $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$ and capitalization rates of %%%%%, %%%%%, %%%%%, %%%%%, %%%%%, %%%%%, %%%%%, and %%%%%. The County's appraiser did not include net operating income or a capitalization rate for one property. The County's appraiser used $$$$$ net operating income and a %%%%% as a capitalization rate to calculate a total capitalized value for the subject property of $$$$$$ by the income capitalization approach. This analysis did not include any effect of site contamination.

The County's appraiser indicated that he preferred to deal with the contamination as a separate issue.

16. The County presented a written estimate of $$$$$ to remediate contamination issues at the subject property. This estimate included excavation and disposal of contaminated material, concrete replacement, asphalt replacement, backfill, and groundwater treatment.

17. The County's appraiser relied mainly on the income approach to valuation at $$$$$ as the most reliable method to value the subject property. From this, the County's appraiser deducted $$$$$ (rounded) for remediation costs for a final value of $$$$$$ for the subject property and Parcel 3 as of the lien date.

APPLICABLE LAW

1. 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.)

2. "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. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

DISCUSSION

The Commission has reviewed the evidence presented for each method of valuation provided by the parties. Reviewing the parties cost approaches to value, the Commission finds that for land value, both the $$$$$ per square foot estimated by the County and the $$$$$ per square foot estimated by the Taxpayer find their support only in the sales that are on the extremes of high and low values for the sales presented by the parties. A more reasonable estimate would follow the greater weight of the evidence, which appears to have more sales at and near $$$$$ per square foot. This would yield a value of $$$$$ for all three parcels presented by the parties and $$$$$ for the two parcels under appeal.

As for the building component of the cost approach to value, the Commission finds that Marshall & Swift cost approach used by the County is a better starting point that the BuildingWorks cost estimate. The Commission also notes the wide disparity between the percentage good of 74% used by the County and the 12% figure used by the Taxpayer. 74% appears high for a building of this age and condition, but 12% is approaching salvage value. Other improvements appear to be either newer or otherwise in better condition than the main building. For that reason, the County's figure of 74% for other improvements appears more reasonable than the 12% to 50% figures on which the Taxpayer relied. The County applied value for fuel dispensing equipment also appears to be more reasonable. Combining these values, the Commission finds that a range of about $$$$$ to $$$$$ is a reasonable cost-approach estimate of improvements to real property, depending on the depreciation used for the building. For all three parcels considered by the parties, this gives a total value range of $$$$$ to $$$$$ by a cost approach to value. Given the age and condition of the subject, the Commission will not rely on the cost approach.

In making a sales approach to value, the Taxpayer makes substantial downward adjustments for properties that are "B" grade compared to the "C" grade that the Taxpayer assigned to the subject property. However, when comparing the subject property to an inferior comparable sale that the Taxpayer rates as an "E" grade, the Taxpayer makes no adjustment. The Taxpayer's representative gave sworn testimony that he was not aware of the sales of any properties with contamination issues, but later provided details about the extent of contamination at one site when the County offered that site as a comparable sale. These types of issues cause concern with the Taxpayer's sales approach to value and the Taxpayer's conclusion that a reasonable value should be computed using a figure of $$$$$ per square foot or that the building size should be considered smaller than the actual size of the building. The Commission finds the County's building size of 4,039 square feet to be accurate. However, the County's evidence includes one sale with a value of $$$$$ per square foot of building area. This sale appears to be an anomaly when compared to other sales evidence. Accordingly, the Commission will remove that sale from consideration. The remaining sales appear to support a value of $$$$$ per square $$$$$ for all three parcels considered by the parties.

In making an income approach to valuation, the Taxpayer presented income figures and capitalization rates without supporting data. The County requested this data, but the parties agree that it did not receive all of the records that it had requested in this regard. Because the Taxpayer's income calculation appears to be made on the basis of data that was not disclosed or otherwise supported, the Commission relies on the market-based annual income of $$$$$ to be more persuasive than the $$$$$ figure presented by the Taxpayer. In terms of a capitalization rate, the Taxpayer reported a range of %%%%% to %%%%%. The County's sales indicated an average of about %%%%%, but included at least two properties in the %%%%% range. Given the age of this property and the uncertainties surrounding the contamination, we believe a capitalization rate of at least %%%%% is justified. Using an annual income of $$$$$ and a %%%%% capitalization rate gives a final value of $$$$$ by the income approach to valuation.

Reconciling the three approaches to value, the Commission notes that a cost approach to value is generally more reliable for newer construction but less so for older buildings. For that reason, the Commission chooses to rely equally on the income and sales approaches to value. From the values from these approaches, the Commission agrees that it is necessary to make deduction for the reasonable cost to bring the subject property into a saleable condition. In this regard, the Taxpayer's estimate of $$$$$ is better supported and provides greater detail than the $$$$$ estimate provided by the County. Taking all of these factors into account, the evidence supports a total value of $$$$$ (rounded) for the three parcels considered by the parties or $$$$$ (rounded) for the two parcels that are the subject of this appeal.

CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, a party requesting a change in value from that determined by the board of equalization must (1) demonstrate that the County's assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *(X) v. Bd. Of Equalization of COUNTY 1*, 943 P.2d 1354 (Utah 1997).

2. The evidence presented supports a conclusion that the value as determined by the board of equalization contained error.

3. The evidence, taken as a whole, supports a value of $$$$$ for the three parcels considered by the parties and $$$$$ for the two parcels under appeal in this matter.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds reasonable evidence to show evidence in the values as originally determined by the County and finds that $$$$$is a reasonable value for the subject property as of January 1, 2007. The Summit County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this ________ day of ______________________, 2009.

____
Clinton Jensen, 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 ______________________, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. Sections 59-1-601 and 63-46b-13 et. seq.

CDJ/08-0347.fof