

08-1364  
LOCALLY ASSESSED PROPERTY  
SIGNED 12-11-08

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No.    08-1364  Parcel Nos.    #####- 1; #####- 2; #####- 3; #####- 4  Tax Type:      Property Tax / Locally Assessed Tax Year:      2007  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, Manager  
                    PETITIONER REP 2

For Respondent:    RESPONDENT REP, 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 December 8, 2008.

At issue is the fair market value of the four subject properties as of January 1, 2007. The subject properties are four industrial/commercial condominiums that both parties have appraised as a unit. The subject properties are located in the COMPLEX at ADDRESS in CITY, Utah. For the 2007 tax year, the four

Appeal No. 08-1364

properties were assessed for a total unit value of \$\$\$\$\$, which the Salt Lake County Board of Equalization (“County BOE”) sustained. The value currently attributed to each parcel by the County is as follow:

<u>Parcel No.</u>	<u>Current Values</u>
#####- 1	\$\$\$\$\$
#####- 2	\$\$\$\$\$
#####- 3	\$\$\$\$\$
#####- 4	<u>\$\$\$\$\$</u>
Total	<u>\$\$\$\$\$</u>

The property owner asks the Commission to reduce the total unit value of the four parcels to a value between \$1,600,000 and \$2,000,000. The property owner, however, does not know how any reduction in total value should be apportioned between the four parcels. The County asks the Commission to reduce the total unit value of the four parcels to \$2,140,000, to be apportioned as follows:

<u>Parcel No.</u>	<u>County’s Proposed Values</u>
#####- 1	\$\$\$\$\$
#####- 2	\$\$\$\$\$
#####- 3	\$\$\$\$\$
#####- 4	<u>\$\$\$\$\$</u>
Total	<u>\$\$\$\$\$</u>

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 four subject properties share the common areas, including parking, of the COMPLEX. The properties' improvements include office, warehouse, and distribution warehouse space. The improvements were built in 1968 and have not been substantially updated since that time. The County recently remeasured all of the subject properties and determined that the four parcels, as a whole, are 68,220 square feet in size (of which approximately 28% is office). Individually, the four parcels include the following spaces:

a. Parcel #####- 1 ("Parcel 1"). This parcel is the northern most condominium in the COMPLEX and is the only one with street access. Its improvements consist of a two-level office building that is 19,153 square feet in size (approximately 10,000 of space on the main floor and 9,000 on the upper floor). The property owner proffered that five or six different tenants occupy the office space;

b. Parcel #####- 2 ("Parcel 2"). This parcel is located behind and abuts Parcel 1. Parcel 2 consists of distribution warehouse space with some limited shop/office space. This parcel is 37,280 square feet in size;

c. Parcel #####- 3 ("Parcel 3"). Parcel 3, which contains 7,334 square feet of warehouse space, is located behind and abuts Parcel 2. This space does not have heating; and

d. Parcel #####- 4 ("Parcel 4"). This parcel is located behind and abuts Parcel 3 and contains 4,414 square feet of warehouse space. Parcel 4 also has no heating.

The subject property was purchased in September 2005 for \$\$\$\$\$ by the TRUST which transferred the property to PETITIONER (an entity controlled by PETITIONER REP 1). For the prior 2006 tax year, the parties stipulated to a total value of \$\$\$\$\$ for the four subject properties.

For this appeal, both parties submitted appraisals, in which the respective appraisers valued the four properties as a unit. Both appraisers used a market approach and an income approach to estimate the unit value of the four properties. For the County, RESPONDENT REP, a certified general appraiser, estimated that the four subject properties' *fee simple value* was \$\$\$\$\$ as of the January 1, 2007 lien date at issue. He asks the Commission to reduce the total unit value of the four subject properties to this amount. RESPONDENT REP also stated that after his inspection of the properties, he determined that this total value should be apportioned between the four properties in the amounts described earlier in this decision.

For the property owner, APPRAISER, a certified general appraiser, estimated that subject properties' *leased fee value* was \$\$\$\$\$ as of December 28, 2007, approximately one year after the lien date. In addition, the property owner submitted its own income approach to show value. PETITIONER REP 1 proffered a revised profit and loss statement showing \$\$\$\$\$ of income for the 2006 tax year. He suggested capitalizing this income at an %%% rate to arrive at a unit value of approximately \$\$\$\$\$ for the four subject properties. Based on this information, he asks the Commission to reduce the total unit value of the four subject properties to a value somewhere between \$\$\$\$\$ and \$\$\$\$\$. He also suggests that a value at the lower end of this range would be most appropriate.

Market Approach. For the County, RESPONDENT REP used five comparable sales to derive a total market approach value of \$\$\$\$\$ for the four subject properties. This value equates to approximately \$\$\$\$\$ per square foot. For the property owner, APPRAISER used five comparables sales to derive a total market approach value of \$\$\$\$\$ for the four subject properties, which equates to approximately \$\$\$\$\$ per square foot.

The Commission notes that RESPONDENT REP used three comparables that are between 57,380 and 83,164 square feet in size to estimate the value of the four properties as a unit. Because the subject properties are legally segregated and because a variety of tenants lease both small and large spaces, he also used comparables that are 22,200 and 6,426 square feet in size. Although the Commission believes that it might be better to prepare a market approach for each individual parcel, it appears that RESPONDENT REP has used different types of comparables in an attempt to account not only for the subject space as a whole, but also for the subject spaces as individual parcels.

APPRAISER also used comparables of various sizes, which ranged between 20,050 and 57,000 square feet in size. The Commission is not convinced that comparables of this size necessarily estimate the value of the separate warehouse spaces that are less than 8,000 in size or the separate office spaces, none of which are over 10,000 in size.

The Commission also notes that neither party used the subject properties themselves as a comparable. The four subject properties sold as a unit in September 2005 for \$\$\$\$\$. In his appraisal, RESPONDENT REP estimates that industrial property appreciated at a yearly rate of 6% in both 2005 and 2006. This appreciation rate appears to be supported by Commerce CRG information provided by the property owner, which shows generally increasing prices for industrial properties between the September 2005 purchase date and the January 1, 2007 lien date. If a 7.5% appreciation rate (for 15 months) is applied to the purchase price of \$\$\$\$\$, a value of approximately \$\$\$\$\$ is derived for the four subject properties as of the January 1, 2007 lien date. Based on the totality of the market information, the Commission is persuaded that the four subject properties have a total value of approximately \$\$\$\$\$ as of the lien date.

Income Approach. For the County, RESPONDENT REP used the income approach to derive a total unit value of \$\$\$\$\$ for the four subject properties. For the property owner, APPRAISER used this approach to derive a total unit value of \$\$\$\$\$ for the four properties. In their respective income approaches,

both appraisers determined that the market rent for the four properties as a unit would be \$\$\$\$ per square foot. Each appraiser also determined that a capitalization rate of %%% should be applied to net operating income to derive value.

The only substantial difference between the parties concerned the manner in which they treated a CAM (common area maintenance) expense for 2006. For the County, RESPONDENT REP deducted a \$\$\$\$ CAM loss as a temporary expense after establishing a “stabilized” value. On the other hand, APPRAISER included a CAM loss of \$\$\$\$ as a perpetual expense that would occur each year in his income approach. PETITIONER REP 1 proffered that a former manager of the subject properties had failed to properly collect CAM expenses, which are reimbursed to the property owner by the tenants that lease the subject properties. For the 2006 year, PETITIONER REP 1 estimated that the property owner failed to collect approximately \$\$\$\$ in CAM expenses that were due from the tenants. PETITIONER REP 1 also characterized this loss as a “one-time” occurrence. The Commission also notes that were APPRAISER’s income approach revised to reflect the \$\$\$\$ CAM loss as a temporary loss or expense, his total income approach value for the four parcels would be approximately \$\$\$\$\$. For these reasons, the Commission finds that the County’s income approach is more persuasive.

However, PETITIONER REP 1 indicates that APPRAISER and RESPONDENT REP were too optimistic in estimating net operating income and a capitalization rate. PETITIONER REP 1 originally submitted a 2006 profit and loss statement showing net income of \$\$\$\$\$. At the hearing, he submitted a revised 2006 profit and loss statement showing net income of \$\$\$\$\$. The Commission notes that depreciation and other expenses should not be included when determining a property’s fair market value. Furthermore, the Commission notes that the primary difference between the two profit and loss statements is an increase in “management fees” from \$\$\$\$\$, as shown on the original statement, to \$\$\$\$\$, as shown on the revised statement. APPRAISER estimated that management fees should be no more than 5% of effective gross

income, which he calculated to be \$\$\$\$\$. RESPONDENT REP also proffered that management fees are generally no more than 3% of effective gross income. Accordingly, without additional information, the management fees reflected in the revised statement appear excessive. In addition, the profit and loss statements would also include the one-time CAM losses, which would need to be treated as a temporary, and not, perpetual expense. For these reasons, the Commission is persuaded that the net operating incomes derived by the two appraisers are more appropriate to use in an income approach than either of the net incomes shown on PETITIONER REP 1's profit and loss statements.

In addition, PETITIONER REP 1 asked the Commission to use an %%%%% capitalization rate instead of the %%%%% rate derived by both of the appraisers. PETITIONER REP 1 proffered that the subject properties were purchased at an %%%%% rate in September 2005. However, dozens of capitalization rate comparables were provided by the two appraisers in their appraisals. Only one of these comparables is above %%%%. The majority of the rates are at %%%% or below. For these reasons, the Commission is not persuaded that an %%%%% capitalization rate should be used.

Based on the totality of the information, the Commission is convinced that an income approach to value would show that the total value of the subject properties would be at least \$\$\$\$\$.

Other Arguments. The property owner has proffered that his taxes in Utah are increasing at a greater rate than they are increasing on properties owned in other states. In addition, the property owner is concerned that he will lose tenants if he passes through to them additional tax expenses. Regardless of the tax burden and the effect the taxes may have on the property owner's tenants, the Commission is required to establish the fair market value of the subject properties. Based on the evidence submitted at the Initial Hearing, the Commission is most persuaded by the County's appraisal and the \$\$\$\$\$ total value derived in it. As a result, the Commission finds that the total value of the four subject properties should be reduced to \$\$\$\$\$ and

Appeal No. 08-1364

that the reduction should be allocated between the individual properties as suggested by RESPONDENT REP in his appraisal.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the total fair market value of the four subject properties should be reduced from \$\$\$\$\$, as established by the County BOE, to \$\$\$\$\$ for the 2007 tax year. The value of each subject property should be reduced from the County BOE Values to the Commission Decision Values, as follows:

<u>Parcel No.</u>	<u>County BOE Values</u>	<u>Commission Decision Values</u>
#####- 1	\$\$\$\$\$	\$\$\$\$\$
#####- 2	\$\$\$\$\$	\$\$\$\$\$
#####- 3	\$\$\$\$\$	\$\$\$\$\$
#####- 4	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>
	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>

The Salt Lake County Auditor is ordered to adjust its records 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.



Appeal No. 08-1364

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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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