

09-1501
LOCALLY ASSESSED PROPERTY
SIGNED 01-14-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-1501 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: Phan
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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 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, Representative
For Respondent: RESPONDENT REP, Appraiser, Salt Lake County

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 November 2, 2009. Petitioner (the “Property Owner”) is appealing the assessed value as established for the subject property by the Salt Lake County Board of Equalization, as of the lien date January 1, 2008. The County Assessor had set the value at \$\$\$\$ and the County Board of Equalization sustained the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing, the representative for the Respondent (the “County”) provided information supporting a value lower than that set by the County Board of Equalization, at \$\$\$\$\$.

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 provide 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. (Utah Code Ann. Sec. 59-2-1006(1).)

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). Further Utah Code Sec. 59-1-1417 places the burden of proof on the Petitioner.

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS, CITY, Utah. The property is .76 of an acre of land improved with an industrial flex space building with 10,267 square feet of leasable area. The building was constructed in 1984. This was not originally designed for office space and there are no windows on two sides of the building. In 2002 the building had been gutted and turned into a motorcycle retail show room. That lasted eighteen months and then the building was vacant. In 2006 (X), which leased another building nearby, leased the subject property and put in \$\$\$\$\$ in improvements, turning the building into office space. (X) had a lease with a base rate of \$\$\$\$\$ and was in the building on the lien date. However, this base lease rate does not include the additional amount (X) was paying for tenant improvements. (X) had reported to the County a rate of \$\$\$\$\$, which may have included the cost of the build out. (X) has now vacated the building. The tenant improvements remain in the building and it is currently being offered for lease as a call center for around \$\$\$\$\$ per square foot.

The representative for the Property Owner argued that this building is an industrial flex space building, not an office building. He indicates that it is not really suited for offices due to lack of windows in the building. The Property Owner did not submit an appraisal in this matter,

but did submit some lease comparables and information on vacancy rates, cap rates, market appreciation and calculated an income indicator from this information. The Property Owner's requested value for this property of \$\$\$\$\$ was based on an income approach from lease rates of industrial flex space buildings and the actual base rate of the subject at \$\$\$\$\$. This rate did not account for the value of the tenant improvements, but it was the Property Owner's contention that tenant improvements did not add to value because they would not suit the next tenant. His leases for these types of buildings were from \$\$\$\$\$ to \$\$\$\$\$ on a triple net basis. One of these leases had been converted to 90% office space and had leased for \$\$\$\$\$ a square foot. Others had only 20% office space. The Property Owner's income indicator allowed a 7% vacancy, which was conservative and 6% total for expenses and reserves. This resulting in net operating income of \$\$\$\$\$. To this the Property Owner applied an %%% capitalization rate, which resulted in a value for this property of \$\$\$\$\$.

The County valued this property as an office building. It was the County's premise that the tenant improvements of converting the entire building to office space would contribute to value. RESPONDENT REP, the representative for the County, did not submit an appraisal. However, like the Property Owner, she submitted comparable leases as well as income indicator. It was also the County's contention that the current asking rate of \$\$\$\$\$ on a triple net basis indicated that the office space would have added value.

Three of her five comparables have leases based on triple net with rates of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$ per square foot. One property had a full service lease at a rate of \$\$\$\$\$ per square foot and one was a modified gross lease at \$\$\$\$\$ per square foot. RESPONDENT REP's converted all rates to full service for her comparison. As full service they ranged from \$\$\$\$\$ to \$\$\$\$\$. In her income indicator she chose a rate of \$\$\$\$\$ for this property. In her income indicator she allowed a 10% vacancy rate, 36% for expenses, 3% for reserves and a capitalization rate with the tax rate loaded of %%%. This resulted in a value for the subject property of \$\$\$\$\$.

Because the two parties' income indicators were relying on triple net verses full service lease rates, both the lease rates and expenses are very different. The Property Owner's representative argued that RESPONDENT REP's lease rate conclusion was high considering some of the comparables were superior buildings for office space compared to the subject property. He also pointed out that some of the adjustments that RESPONDENT REP made to her lease comparables were higher than reasonable.

It is clear that the original value set by the County Board of Equalization was erroneous, as even the County was not able to support that value. Therefore, the Commission considers if

there is an evidentiary basis to adopt a lower value. After reviewing the information submitted by the parties, the Property Owner has not fully taken into account value added to this property by the tenant improvements that converted the entire building to office space. However, the County overvalued the property by comparing it to office buildings and not industrial flex space converted to office buildings. In addition it appears that some of her time adjustments for the leases were high and she estimated full service lease values from triple net leases. Also there is the factor that one of the Property Owner's comparables was an industrial flex space building converted to 90% office space and leased for only \$\$\$\$ a square foot. The information indicates that a lease rate on a triple net basis around \$\$\$\$ per square feet would take into account the unique situation of this building. Using the Property Owner's other income factors because they were on a triple net basis and reasonable, indicates a value of \$\$\$\$ for the lien date at issue.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2008, is \$\$\$\$\$. The County Auditor is hereby 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. 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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