

09-2430  
LOCALLY ASSESSED PROPERTY TAX  
SIGNED 04-22-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER,<br><br>Petitioner,<br><br>v.<br><br>BOARD OF EQUALIZATION OF<br>SALT LAKE COUNTY, STATE OF UTAH,<br><br>Respondent. | <b>INITIAL HEARING ORDER</b><br><br>Appeal No.    09-2430<br><br>Parcel No.    #####<br>Tax Type:    Property Tax / Locally Assessed<br>Tax Year:    2008<br><br>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., Representative

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 April 7, 2010.

At issue is the fair market value of the subject property as of January 1, 2008. The subject is a former COMPANY 1 ("COMPANY 1") located at ADDRESS 1, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject was assessed for the 2008 tax

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year. The taxpayer asks the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to reduce the subject's value to \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

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 . . . .”

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 contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation 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 Comm’n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm’n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm’n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is a “big box” store that was built in 1993 to house COMPANY 1. COMPANY 1 vacated the subject property in late 2007 and the property has been vacant ever since. The subject property consists of 8.78 acres of land and a retail store that has 132,580 square feet of rentable space.

The taxpayer purchased the subject property in March 2005 for \$\$\$\$\$ , when it was still occupied by COMPANY 1. Since COMPANY 1 vacated the property in late 2007, the taxpayer has marketed

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the subject property for sale, as well as for lease. As late as January 2009, the taxpayer was marketing the subject property for sale at \$\$\$\$\$. As of the hearing date, the property is listed for sale at \$\$\$\$\$.

In March 2010, the taxpayer received an offer of \$\$\$\$\$ for the subject property, which the taxpayer did not accept. Nevertheless, the taxpayer asks the Commission to reduce the subject's value to the \$\$\$\$\$ offer price. The \$\$\$\$\$ offer does not establish the subject's value as of the January 1, 2008 lien date. The offer occurred more than two years after the lien date, and the County appraiser indicated that values began to drop in mid-2008. In addition, the taxpayer did not accept the offer, which suggests that the subject's value as of March 2010 is higher than \$\$\$\$\$. Finally, the \$\$\$\$\$ price at which the taxpayer purchased the subject property in March 2005 does not establish the subject's value nearly three years later. The County indicated that prices rose significantly between March 2005 and January 1, 2008. As a result, neither of these values is convincing evidence of the subject's value as of the lien date.

Both parties have submitted income approaches to value the subject property. The taxpayer derived an income approach value of \$\$\$\$\$, while the County derived a value of \$\$\$\$\$. The County asks the Commission to reduce the subject's value to \$\$\$\$\$, based on its income approach. Both parties agree that a 3% management expense rate is appropriate to use in an income approach. However, they disagree as to the remaining elements of the income approach, as discussed below.

Lease Rate. The taxpayer used a \$ per square foot lease rate in its income approach, while the County used a \$ rate in its approach. After COMPANY 1 vacated the subject property and as late as January 2009, the taxpayer marketed the subject for lease at \$\$\$\$\$ to \$\$\$\$\$ per square foot. As of the date of the hearing, the taxpayer is marketing the subject for lease at \$\$\$\$\$ to \$\$\$\$\$ per square foot.

The taxpayer's representative states that she does not believe that the subject will currently rent for more than \$\$\$\$\$ per square foot. In addition, she stated that she was aware of a big box store that

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recently leased in Salt Lake County for \$\$\$\$ per square foot. However, in a market that has decreased since mid-2008, current lease rates do not establish a January 1, 2008 lease rate for the subject.

The County's \$\$\$\$ proposed lease rate is more convincing than the taxpayer's \$\$\$\$ proposed rate. First, the taxpayer's representative stated that a former employee at her firm derived the \$\$\$\$ rate and that she does not know how it was determined or what comparables may have been used to derive it. Second, the County provided lease comparables that support its \$\$\$\$ rate. The County provided six lease comparables of properties that leased in Salt Lake County between August 2006 and January 2008. The comparables were smaller than the subject, ranging between 22,400 and 88,760 square feet in size, and the County indicated that the subject would compete with other properties in excess of 50,000 square feet. Three of the comparables were in excess of 50,000 square feet and leased for rates of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$ per square foot. The comparable that leased for \$\$\$\$\$ per square foot was twenty years older than the subject, as it was built in 1973. The comparables that leased for \$\$\$\$\$ and \$\$\$\$\$ per square foot were approximately ten years newer than the subject. Once the County's appraiser adjusted these comparables for time and age, he derived adjusted lease rates of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. He stated that he used a \$\$\$\$\$ lease rate in his income approach because the subject was vacant as of the lien date and because he believed it would have leased quickly had it marketed at \$\$\$\$\$ per square foot on January 1, 2008. A lease rate of \$\$\$\$\$ per square foot and 132,580 rentable square feet results in potential gross income ("PGI") of \$\$\$\$\$.

Vacancy Rate. The taxpayer used a 10% vacancy rate in its income approach, while the County used a 5% vacancy rate. The taxpayer indicated that a 10% rate is better because a big box store, once vacant, is generally vacant longer than other properties. The County's appraiser, RESPONDENT REP., indicated that 5% is a typical vacancy rate used for big box stores because they generally have less tenant turnover than other properties. RESPONDENT REP. acknowledges that the store has been vacant for more than two years as of the hearing date. However, he states that he believes it would have leased more quickly

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had the taxpayer originally marketed it for lease at \$\$\$\$ per square foot. RESPONDENT REP. is an appraiser who is familiar with the Salt Lake market, while the taxpayer's representative acknowledged that she was unfamiliar with how most of the variables used in the taxpayer's income approach were established. For these reasons, the County's proposed vacancy rate of 5% is more convincing than the taxpayer's proposed vacancy rate of 10%. Applying a 5% vacancy rate to the \$\$\$\$ of PGI determined earlier results in effective gross income ("EGI") of \$\$\$\$.

Reserves Expense Rate. The County has recommended a reserves expense rate that is 3% of EGI, while the taxpayer has calculated an annual reserves expense in the amount of \$\$\$\$ (which is 6.4% of EGI). The County's appraiser states that 3% is a reserves expense rate commonly used in income approaches for commercial properties. The taxpayer's proposed reserves expense of \$\$\$\$ is a calculation of the annual amount that would be needed to replace the subject's roof and HVAC system. The taxpayer calculated the reserves expense amount from the February 2007 version of Marshall & Swift. The County did not refute the amounts calculated by the taxpayer, but reiterated that it uses a 3% reserves expense rate to assess other properties in the County. The reserves expense amount calculated by the taxpayer specifically relates to the subject property and is more convincing, in this case, than the County's general 3% rate. Subtracting a 3% management expense rate (to which the parties agreed) and \$\$\$\$ of annual reserves expense from the EGI of \$\$\$\$ determined earlier results in net operating income ("NOI") of \$\$\$\$.

Capitalization Rate. The County proposes an %%% capitalization rate, while the taxpayer proposes an %%% rate. The County's proposed capitalization rate of %%% is more convincing. First, the taxpayer's representative admitted that she did not know how the %%% rate was determined and what information was used to derive the rate. Second, the County provided capitalization rate comparables and other information to support the %%% rate. The County provided three lease comparables. One sold in 2005 and is given little weight. However, the other two sold in February 2008 and show capitalization rates of

8.0% and 9.0% for retail properties in Salt Lake County that are similar in size and age to the subject. The County also proffered evidence from the 2008 Commercial Symposium showing that the average capitalization rate for retail properties in Salt Lake County in 2007 was 8.0%. The County indicated that it used an 8.0% capitalization rate for the subject in its income approach because the subject had recently become vacant as of the lien date.

Capitalizing the \$\$\$\$ of NOI determined earlier at 8.0% results in a “stabilized” income approach value of \$\$\$\$\$. However, a stabilized income approach value often overestimates the fair market value of a property where that property is vacant as of the lien date and significant amounts of “short-term losses and expenses” are anticipated. In such cases, “short-term rent loss” is usually calculated and deducted from the stabilized income approach value to derive fair market value.

Short-Term Rent Loss. Both parties determined that short-term rent loss should be calculated and deducted from the subject’s stabilized income approach value in this case. The taxpayer determined that \$\$\$\$ of short-term rent loss should be deducted from the stabilized value, while the County determined that \$\$\$\$ should be deducted from the stabilized value.

The taxpayer derived its short-term rent loss by calculating amounts for one year of rent loss, tenant improvements of 2%, leasing commissions of 6%, and operating expenses of \$\$\$\$ per square foot. The County, however, determined that two years of rent loss would be appropriate, but that no tenant improvements would be required at a lease rate of \$\$\$\$ per square foot. The County also used leasing commissions of 6% and operating expenses of \$\$\$\$ per square foot to derive its total short-term rent loss.

The County has calculated a higher amount of rent loss. Although the County did not include any tenant improvements in its calculation, it has included rent loss associated with two years of vacancy. As a result, the County’s overall short-term rent loss amount of \$\$\$\$ does not appear unreasonable and results in a lower fair market value for the subject property than using the taxpayer’s estimated rent loss. Deducting

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\$\$\$\$\$ of short-term rent loss from the stabilized value of \$\$\$\$\$ determined earlier results in a fair market value of \$\$\$\$\$ for the subject property.

Final Value. The income approach derived above shows that the subject's 2008 fair market value should be reduced to \$\$\$\$\$. Although the County also submitted a sales comparison approach in which it estimated the subject's value to be \$\$\$\$\$, it gave this approach no weight in reconciling a final value for the subject. The Commission will also give it no weight.

Lastly, the taxpayer's representative states that the County had previously agreed to stipulate to a value of \$\$\$\$\$, which her client did not accept. The taxpayer's representative contends that the Commission should not establish a value higher than this \$\$\$\$\$ value. The County, however, stated that it agreed to stipulate at this value prior to preparing a detailed study of the subject property and comparables. The County asks the Commission not to establish the \$\$\$\$\$ value as the upper limit of the subject's value. The \$\$\$\$\$ at which the County agreed to stipulate earlier in the appeals process was rejected by the taxpayer and does not establish an upper limit of value for the subject. Utah Admin Rule R865-1A-33(B)(5)(b) provides that "[o]ffers made during the negotiations process will not be used as an admission against that party in further adjudicative proceedings." The evidence that the parties submitted at the hearing shows that the subject's value should be reduced to \$\$\$\$\$.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

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Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2008 tax year. 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 taxpayer'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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