

10-0065
LOCALLY ASSESSED PROPERTY- COMMERCIAL
TAX YEAR: 2009
SIGNED: 01-27-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 10-0065 Parcels: #####-1, #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Jensen
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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:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, PETITIONER
 PETITIONER REP. 2, COMPANY 1
 PETITIONER REP. 3, COMPANY 1
 PETITIONER REP. 4, COMPANY 2
For Respondent: RESPONDENT REP. 1, for RURAL County
 RESPONDENT REP. 2, for RURAL County

STATEMENT OF THE CASE

The above-named Petitioner (the “Taxpayer”) brings this appeal from the decision of the Board of Equalization of RURAL County (the “County”). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on May 6, 2010. The Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2009. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of

equalization reduced the value to \$\$\$\$\$. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization be increased to \$\$\$\$\$.

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 provided 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).)

To prevail, a party requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization 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*, 590 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is comprised of parcel numbers #####-1 and #####-2. It is located at ADDRESS 1 in RURAL County. The subject property includes a ten-acre commercial site improved with commercial buildings and 148 acres of excess land that was in agricultural production as of the lien date. The parties agreed that the market value of the 148 acres of excess land was CITY 2,453,952 as of the lien date. They likewise agreed that to value the subject property, the most reasonable approach would be to separately value the ten-acre commercial site and its improvements and then add the \$\$\$\$\$ value of the 148 acres of excess land to arrive at a total valuation.

The subject property is improved with 123,148 square feet of industrial buildings. The buildings were constructed in 1992 and 2001 and have ceiling heights of 17 to 25 feet. There is access to a railroad spur. Fire suppression sprinklers cover approximately 90% of the building area. Most of the buildings are metal panel construction with some areas of cosmetic brick trim. Approximately 7% of the building area is office space.

The Taxpayer presented evidence that approximately 14,000 square feet of the commercial building space were unused as of the lien date due to decreased market demands. The Taxpayer also presented evidence that approximately 19,000 square feet of the commercial building space had narrow buildings, low ceilings, and significant distances from the main

building area. The Taxpayer presented evidence of concrete hardened construction in the main building and berms around smaller buildings to provide protection against explosion. The Taxpayer presented evidence that the unusual building layout and blast protection measures were necessary to increase the safety of explosive charges that became components of the Taxpayer's products. The County did not dispute the specialized nature of the commercial building areas, but indicated that the buildings should be valued at replacement cost less depreciation without obsolescence because they provided the facilities necessary for the Taxpayer to conduct its business.

The Taxpayer submitted a valuation of the commercial portion of the subject property. The Taxpayer's documentation included three approaches to valuation, indicating a cost approach value of \$\$\$\$\$, a sales comparison approach value of \$\$\$\$\$ and an income approach value of \$\$\$\$\$. The Taxpayer reconciled the three values to arrive at a final \$\$\$\$\$ estimate of value for the commercial portion of the subject property. To this, the Taxpayer added \$\$\$\$\$ for excess land for a total rounded valuation of \$\$\$\$\$.

In the cost approach the Taxpayer indicated that the value of the commercial land was \$\$\$\$\$ and the cost to construct the improvements was \$\$\$\$\$. The Taxpayer then added 10% to the improvement cost, or \$\$\$\$\$, for indirect costs of construction. This brought the total replacement cost of buildings to \$\$\$\$\$. The Taxpayer assumed that the builder would be the owner and thus added no entrepreneurial profit. The Taxpayer deducted \$\$\$\$\$ in age/life depreciation for the age and condition of the buildings, \$\$\$\$\$ for functional obsolescence for super adequacy of construction, and \$\$\$\$\$ in external obsolescence for building area idled by economic conditions. This resulted in a cost value of \$\$\$\$\$¹ for the commercial property including the ten-acre commercial site but without the 148 acres of excess land.

In the sales comparison approach, the Taxpayer considered the sales of four properties. Those properties had selling prices that calculated to \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. The Taxpayer made adjustments to account for differences between the subject property and the comparable properties for factors such as building size, physical condition, location, ceiling height, and office percentage. After taking these adjustments into account, the sales comparables indicated values of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. The Taxpayer's representative conceded that an error in the adjustments to value for the fourth comparable sale understated the adjusted value of \$\$\$\$\$ by 10%. The first comparable had net

¹ There are minor discrepancies comparing the component parts of the Taxpayer's cost approach to the Taxpayer's totals. These are not significant and appear to be rounding differences.

adjustments of zero. It had an adjusted value of \$\$\$\$ per square foot and was most similar to the subject. The Taxpayer concluded a value of \$\$\$\$ per square foot, which calculates to \$\$\$\$ for the 123,148 square feet in the building on the subject property. This figure did not include excess land.

In its income approach, the Taxpayer considered rents from 27 comparables, which resulted in a lease rate of \$\$\$\$ per square foot. The Taxpayer's representative indicated that it was necessary to select some rent comparables in more metropolitan area because industrial properties in rural areas were generally owner-occupied. The Taxpayer's industrial rental comparables included properties in CITY 1 and CITY 2 for warehouse, manufacturing, and distribution operations. For the 123,148 square feet rentable, this resulted in a net operating income of \$\$\$\$ after deducting 5% for vacancy. The Taxpayer relied on the Commerce CRG market review for the fourth quarter of 2008 to arrive at a capitalization rate of %%%%. The Taxpayer conceded that this was higher than the %%%% rate indicated in the CRG study for industrial properties. The Taxpayer presented expert testimony supporting a somewhat higher capitalization rate for an industrial property in a rural area because building such a facility away from major population centers would entail more risk and would be expected to cause investors to demand a higher rate of return. Applying the %%%% capitalization rate to the net operating income of \$\$\$\$ resulted in a \$\$\$\$ value by the income capitalization method. This does not include excess land.

In reconciling values from the cost, sales comparison, and income approaches to value, the Taxpayer placed primary reliance on the sales comparison and income approaches to value. The Taxpayer presented evidence expert testimony that these two approaches were more accurate than the cost approach in spite of the unique construction of the commercial property and the super adequacy present in its building. The Taxpayer reconciled the two approaches to an estimated fair market value of \$\$\$\$\$. Adding \$\$\$\$ for excess land resulted in the Taxpayer's final valuation of \$\$\$\$ (rounded).

The County did not directly dispute the Taxpayer's valuation calculations for income or sales approaches to valuation. However, the County argued that because the buildings on the subject property have unusual construction features to support the Taxpayer's manufacturing operations, the only valid method to value the subject property was a cost approach. The County testified that the Taxpayer purchased the subject property when it acquired the manufacturing operation and that the custom construction suited the Taxpayer's operations. The County's witnesses indicated that it did not make sense for a Taxpayer or its predecessor to custom-build a

structure for its exacting needs and then to claim a lessened value for the structures it constructed. The County did not explain how it derived a final value of \$\$\$\$\$, but submitted this as its requested value for the subject property. In short, the County is merely arguing that the original assessment should be reinstated, but has not provided evidence to establish the BOE decision was in error.

Utah Code Sec. 59-2-103 provides that property will be taxed at a uniform rate on the basis of its “fair market value.” “Fair market value” is defined at Utah Code Sec. 59-2-102(12) as “the amount at which property would change hands between a willing buyer and a willing seller.” The County argues that the Taxpayer’s predecessor would not have constructed a building with special features if it did not have a use for a building with those features. Utah law requires more than a mere assertion, however. It must be shown that a “willing” or probable buyer would be willing to pay for those features. There is nothing in the record to show this. Also, the fact that the property has special construction features is insufficient in and of itself to establish that the only appropriate approach to value is the cost approach. For this reason, the County’s argument for using a cost approach cannot simply stand on its own, without showing why the sales and income approaches cannot be used. Finally, the County argued that the Taxpayer purchased the property with special construction features suited for the use of the property, and therefore should not be valued on a lower basis than produced by the income and sales comparison approaches. This argument cannot be verified on the evidence on presented at hearing. The purchase price of the real property is not known; the Taxpayer purchased the entire business, not just the tangible real and personal property. Without some kind of purchase price allocation compared with an income and market sales analysis, the relative equivalency of the various approaches cannot be established.

The Taxpayer’s evidence included expert and fact testimony to support that the current use of the subject property as its highest and best use. The Taxpayer’s witnesses testified that if the Taxpayer were to move its manufacturing operation to another facility, the subject property would likely have a period of vacancy that would extend for many years as has been the case for another large industrial property near the subject property. The evidence presented by both parties also indicates that at least part of the subject property has design and construction features that limit the marketability of the property without significant capital investment. In spite of these factors, the evidence is inconclusive as to whether the highest and best use of the subject property is general light industrial/manufacturing or specialized manufacturing for explosive devices. Accordingly, it is appropriate to at least consider the value the Taxpayer’s facility as a

property with limitations to its marketability. While the Taxpayer has argued that the income and sales approaches to value best meet Utah's statutory definition of fair market value, it has not provided sufficient information to support its theory that no buyers would be interested in a manufacturing facility with the construction features that allow for the manufacture of products that the Taxpayer produces. In fact, the Taxpayer's purchase of a manufacturing operation that included the subject property supports the view that it would be reasonable for another buyer to purchase the operation in a like manner.

As a general rule, valuations such as those from a county board of equalization are entitled to a "presumption of correctness." See *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652, 656 (Utah 2000), quoting, *Utah Power & Light Co. v. Tax Comm'n*, 590 P.2d 332 (Utah 1979). "This presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission." *Id.* In terms of selecting a value under a cost approach, the County failed to present evidence or analysis to support its requested value of \$\$\$\$\$. The Taxpayer's cost approach provides replacement costs with deductions for age, external obsolescence, and functional obsolescence that appear modest in light of the testimony provided to support these deductions. While the County's argument that adjustments for external and functional obsolescence may not be warranted is not totally without merit, it failed to totally refute these adjustments. It is reasonable that the vacancy and at least some of the building construction features were indicative of external and functional obsolescence respectively. In the absence of specific rebuttal by the County with respect to the obsolescence adjustments, the Taxpayer has provided sufficient evidence to establish a value of \$\$\$\$\$ under its cost approach to value. However, the Taxpayer has not provided sufficient reason to depart from the cost approach to value the subject using a comparative sales or income approach to value.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009 is \$\$\$\$\$. The RURAL County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

Appeal No. 10-0065

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
CITY 1, 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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