

10-1611
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2009
SIGNED: 05-09-2011
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 10-1611 Account No. #####-1 Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Marshall
--	---

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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Representative
For Respondent: RESPONDENT REP. 1, Salt Lake County Assessor's Office
RESPONDENT REP. 2, Salt Lake County Assessor's Office

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on November 24, 2010 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2009 lien date, which

the Board of Equalization sustained. The County is asking the Commission to sustain the Board of Equalization. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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.

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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...
- (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
 - (a) the issue of equalization of property values is raised; and
 - (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

Any party requesting a value different from the value established by the County Board of Equalization 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. To prevail, a party must: 1) demonstrate that the value established by the County contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on

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, 335 (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). See also Utah Code Ann. §59-1-1417 which provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The subject property is parcel no. #####-1, located at ADDRESS 1. It is a 1.98-acre parcel improved with an owner-occupied office/warehouse built in 1993. It has 36,301 square feet, 52% of which is office space. The County considers the property to be construction class “C” and rental class “B”.

The Taxpayer is requesting a value of \$\$\$\$\$. Taxpayer’s representative gave an overview of the market. He stated the market peaked in 2007 and then started to decline as lenders required more equity from buyers and rates became unstable. He argued that while actual lease rates were stable, the effective lease rates were lower because of concessions being offered to tenants. In support of its requested value, Taxpayer used the market and income approaches, as well as made an equalization argument.

Taxpayer determined a value of \$\$\$\$\$, using a price per square foot of \$\$\$\$\$, based on the following comparable sales:

	Address	Eff. Yr. Blt.	Use	Sq. Ft.	Office	Sales Date	Sales Price	Price/ Sq. Ft.
Subject	ADDRESS 1	1993	Off/Whs	36,301	52%			
Sale #1	ADDRESS 2	1992	Office	72,285	100%	6/1/08	\$\$\$\$\$	\$\$\$\$\$
Sale #2	ADDRESS 3	2001	Off/Whs	15,918	100%	12/1/08	\$\$\$\$\$	\$\$\$\$\$
Sale #3	ADDRESS 4	1992	Office	10,170	99%	4/1/08	\$\$\$\$\$	\$\$\$\$\$
Sale #4	ADDRESS 5	1997	Ind/Mfg	14,311	12%	12/1/08	\$\$\$\$\$	\$\$\$\$\$
Sale #5	ADDRESS 6	2000	Ind/Mfg	13,000	20%	3/1/09	\$\$\$\$\$	\$\$\$\$\$
Sale #6	ADDRESS 7	2001	Industrial	15,589	24%	12/1/08	\$\$\$\$\$	\$\$\$\$\$
Sale #7	ADDRESS 8	1993	Ind/Mfg	84,000	5%	4/1/08	\$\$\$\$\$	\$\$\$\$\$
MEAN		1997		32,182	51%	9/9/08	\$\$\$\$\$	\$\$\$\$\$

Taxpayer also provided information indicating that the 2009 assessed value of the comparable sales was an average of 12% lower than the sales price.

Taxpayer determined a value of \$\$\$\$\$ using the income approach. An adjusted lease rate of \$\$\$\$\$ per square foot was determined from the following leases:

	Address	Eff. Yr. Blt.	Use	Sq. Ft.	Office	Class	Lease Type	Lease Rate
Subject	ADDRESS 1	1993	Off/Whs	36,301	52%	B		
Lease #1	ADDRESS 9	1997	Ind/Mfg	45,000	5%	C	NNN	\$\$\$\$\$
Lease #2	ADDRESS 10	1981	Flex/Ind	60,000	19%	C	NNN	\$\$\$\$\$

Appeal No. 10-1611

Lease #2	ADDRESS 11	1999	Flex	38,400	25%	C	NNN	\$\$\$\$
Lease #3	ADDRESS 12	1989	Office	38,350	100%	C	NNN	\$\$\$\$
Lease #4	ADDRESS 13	1976	Office	3,559	100%	C	MG	\$\$\$\$*
Lease #5	ADDRESS 14	2005	Office	3,000	100%	B	NNN	\$\$\$\$
MEAN		1991		31,385	58%			\$\$\$\$

*Adjusted to \$\$\$\$ for NNN.

The average lease rate was adjusted negatively 5% to account for lease concessions/tenant improvements, and positively 10% each for location and rental class. A vacancy rate of 12% was used based on the average of office and warehouse vacancy rates reported in the Commerce CRG 2008 year-end report. Property management expenses of 7% were used, based on NAI Utah charging a 4% management fee and a 4% leasing fee. Capital improvement expenses of \$\$\$\$ were deducted, representing an average of actual expenses of the past three years. A %%% capitalization rate was used, based on the average of office and industrial capitalization rates reported in the Commerce CRG 2008 year-end report. Following is a break-down of the Taxpayer's income calculations:

Potential Gross Income	\$\$\$\$
Vacancy	\$\$\$\$
Effective Gross Income	\$\$\$\$
Management	\$\$\$\$
Capital Improvements	\$\$\$\$
Net Operating Income	\$\$\$\$
Capitalization Rate	%%%%
Value	\$\$\$\$

The Taxpayer also raised an equalization argument, and provided the following analysis of office buildings near the subject:

	Address	Eff. Yr. Blt.	Class	Sq. Ft.	Office	Assessed Value	Value/ Sq. Ft.
Subject	ADDRESS 1	1993	Off/Whs	36,301	52%	\$\$\$\$	\$\$\$\$
#1	ADDRESS 15	1997	A	78,595	100%	\$\$\$\$	\$\$\$\$
#2	ADDRESS 16	1996	A	98,289	100%	\$\$\$\$	\$\$\$\$
#3	ADDRESS 17	1983	B	76,610	100%	\$\$\$\$	\$\$\$\$
#4	ADDRESS 18	1982	B	25,298	100%	\$\$\$\$	\$\$\$\$
#5	ADDRESS 19	1981	B	19,040	100%	\$\$\$\$	\$\$\$\$
#6	ADDRESS 20	1981	A	10,982	99%	\$\$\$\$	\$\$\$\$
#7	ADDRESS 21	1980	C	13,986	100%	\$\$\$\$	\$\$\$\$
#8	ADDRESS 22	1982	C	12,576	100%	\$\$\$\$	\$\$\$\$
#9	ADDRESS 23	1984	C	10,556	100%	\$\$\$\$	\$\$\$\$
#10	ADDRESS 24	1980	C	10,556	100%	\$\$\$\$	\$\$\$\$
#11	ADDRESS 25	1979	C	10,556	100%	\$\$\$\$	\$\$\$\$
#12	ADDRESS 26	1978	B	7,384	100%	\$\$\$\$	\$\$\$\$

The Taxpayer determined an average assessed value of \$\$\$\$ per square foot for the comparables. This value was applied to half of the square footage, to arrive at a value of \$\$\$\$

for the office portion of the subject. Taxpayer used a value of \$\$\$\$ per square foot for the warehouse portion of the subject property, for a total value of \$\$\$\$.

The County’s representative disagrees with the Taxpayer’s account of the market conditions. He stated that while the residential market peaked in 2007, the commercial market did not peak until late 2008. He stated that in the fall of 2008 lending requirements started to change.

The County’s representative provided information on the following comparable sales in support of the Board of Equalization value:

	Address	Eff. Yr. Blt.	Sq. Ft.	Office	Sales Date	Sales Price	Price/ Sq. Ft.
Subject	ADDRESS 1	1993	36,301	52%			
Sale #1	ADDRESS 27	1995	30,091	27%	11/29/07	\$\$\$\$	\$\$\$\$
Sale #2	ADDRESS 28	1988	15,791	31%	12/27/07	\$\$\$\$	\$\$\$\$
Sale #3	ADDRESS 29	1980	29,005	14%	12/31/08	\$\$\$\$	\$\$\$\$
Sale #4	ADDRESS 30	1979	36,125	23%	8/4/07	\$\$\$\$	\$\$\$\$
MEDIAN		1984	29,548	25%			\$\$\$\$
MEAN		1986	27,753	24%			\$\$\$\$

The County’s representative used a price per square foot of \$\$\$\$ to arrive at a value of \$\$\$\$ for the subject property. He then indicated upward adjustments of 5% for office percentage and 10% for location were appropriate, to arrive at a value of \$\$\$\$ for the subject property. He noted that the County’s comparables were all single-tenant buildings, like the subject, and were similar in terms of year built, size, and office build-out.

With regard to the Taxpayer’s income approach, the County’s representative noted that capital improvements and leasing fees are not operating expenses and should not be included in the calculation. He stated that the Taxpayer had deducted 7.3% for capital improvements, when a 3% allowance for replacement/reserves was generally accepted for the market. He stated that the expense deduction should be limited to 3% for management fees and 3% for replacement/reserves. The County’s representative did not note any other objection to the Taxpayer’s income calculation.

The County’s representative asked the Commission to put little weight on the Taxpayer’s equalization argument. He stated that the subject is a unique property in that it is a single-tenant building that was designed and built for the taxpayer’s purposes. He noted it is also in a unique location; it is a two-story office/manufacturing building located in the heart of a retail area. He indicated there was probably some external obsolescence for the subject because the land could

be put to a higher occupancy use. The County's representative argued that in order to prevail on an equalization argument a taxpayer must compare the subject to similar properties, and that the Taxpayer has not done so in this case. He also pointed out that at least two of the properties the Taxpayer used in his analysis were actually comprised of multiple parcels, which the Taxpayer did not take into consideration in his calculations.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller. Taxpayer offered seven comparable sales that ranged in size from 10,170 to 84,000 square feet, and had sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot. If adjustments were made to account for differences in location, square footage, office finish, and use, the comparable sales would tend to support a value higher than that determined by the Taxpayer. The County provided four comparable sales that ranged in size from 15,791 to 36,125 square feet and ranged in price from \$\$\$\$\$ to \$\$\$\$\$ per square foot. The comparable that sold for \$\$\$\$\$ appears to be an outlier, it sold for significantly more on a price per square foot basis than any of the County's, or the Taxpayer's other comparable sales. If this sale were excluded, the average sales price of the County's comparables would be \$\$\$\$\$ per square foot, or \$\$\$\$\$ per square foot with adjustments for location and office percentage. This indicates a value of \$\$\$\$\$. With regard to the Taxpayer's income approach, the County took exception to the management and leasing fees, as well as the use of capital improvements for expense. If the County's proposed 3% management fee and 3% for replacement/reserves, it indicates a value for the subject of \$\$\$\$\$. Due to the nature of the subject property, it is reasonable to place more weight on the market approach, rather than the income approach. Looking at the evidence as a whole, a value of \$\$\$\$\$ appears to be reasonable.

Taxpayer has effectively raised an equalization argument, in order to prevail under Utah Code Ann. §59-2-1006(4), the Taxpayer must also show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. Taxpayer provided information on the valuation of twelve office buildings that range in size from 7,384 to 98,289 square feet, and range in value from \$\$\$\$\$ to \$\$\$\$\$ per square foot. These properties are 100% office space, without any warehouse/industrial space like the subject; they range in rental class from "A" to "C", while the subject is a "B" class rental; there are only two that are similar in age,

and the one most similar in terms of square footage is 10,000 square feet smaller than the subject. The County's representative argued that the office buildings are not comparable to the subject, and that the Taxpayer's analysis is flawed in that it did not consider the value of all parcels associated with certain office buildings. It is questionable whether the properties used by the Taxpayer are "comparable" to the subject for purposes of making an equalization claim and a determination of any disparate treatment cannot be made. Further, if looking at only the class "B" office space the average value per square foot was \$\$\$\$\$, which is higher than the value on the subject. Accordingly, Taxpayer's equalization claim should be denied.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2009 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner