

11-2158
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2010
SIGNED: 04-12-2012
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. 11-2158 Parcel No. #####-1, #####-2 and #####-3 Tax Type: Property Tax/Locally Assessed Tax Year: 2010 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 regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Representative
For Respondent: RESPONDENT REP., Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on March 8, 2012, in accordance with Utah Code §59-1-502.5. This matter involves three parcels of property that operate as one economic unit. The Salt Lake County Assessor's Office had originally valued all three parcels for a total unit value of \$\$\$\$\$, as of the January 1,

2010 lien date. The County Board of Equalization (“County”) had sustained the value. At the hearing the Property Owner requested a reduction to a total value of \$\$\$\$\$ and the County’s representative asked the Commission to sustain the County’s value, although he did submit information indicating a higher value of \$\$\$\$\$. The original assessed values and the values requested at the hearing by the parties for each parcel are as follows:

Parcel No.	Original Assessed Value	BOE Value & County’s Request	Property Owner’s Request
#####-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Total	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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).)

(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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

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).

DISCUSSION

The subject parcels together are a distribution warehouse building and associated parking area. The building has a total of 174,369 rentable square feet. Although the building does overlap onto all three parcels at issue, the County assessment attributes all of the building to Parcel #####-1 and values the remaining parcels as associated land parcels. The three parcels combined are 5.06 acres of land. Both parties valued all three parcels together as one unit. The building itself had been constructed in two phases. The first section of the building had been constructed in YEAR 1 and the second portion in YEAR 2. The County considered this to be an average year of construction of YEAR 3. The building is a Class C construction with 24 foot ceiling heights. There is also 5% office area.

The representative for the Property Owner stated that for the 2009 tax year the combined value for the subject parcels had been \$\$\$\$\$. It was her position that values had declined from 2009 to 2010 and so the assessment should not have increased. She submitted an income approach and a cost approach for the property. For her income indicator, she acknowledged that the current lease rate for the subject was \$\$\$\$\$ per square foot, but argued that rate was too high for the current market. The current rate was from a lease that had been signed in 1985. It was her position that the actual market rate for a building as large as the subject was \$\$\$\$\$ per square foot. She provided two lease comparables. One was from BUILDING 1, at a rate of \$\$\$\$\$ per square foot for a total of 56,178 square feet. The other was from BUILDING 2, where 25,000 square feet were leased at a rate of \$\$\$\$\$ per square foot. It was her position that these supported \$\$\$\$\$ per square foot for the subject, as the subject was a much larger space than these two leases and rents were generally lower the larger the size of the space leased. The County pointed out that these two buildings were much older than the subject, having been constructed in YEAR 4.

The representative for the Property Owner also provided a number of lease listings. She states that she did not have access to actual lease rental information. Of the 12 lease listings provided, one was at \$\$\$\$\$ per square foot and one at \$\$\$\$\$. The remaining 10 leases were offered at \$\$\$\$\$ to \$\$\$\$\$. The average of all twelve was \$\$\$\$\$ per month.

Using the lease rate of \$\$\$\$\$ per square foot the Property Owner calculated an income approach value of \$\$\$\$\$. At \$\$\$\$\$ per square foot the potential gross income was \$\$\$\$\$. She had applied 10% vacancy loss, 5% management expenses and 5% for reserves. It was her

conclusion that the net operating income was \$\$\$\$\$. She divided this by an overall capitalization rate of %%%%, which resulted in the value of \$\$\$\$\$.

The representative for the Property Owner also provided a cost indicator based on Marshall & Swift cost information and the County's land value. From this it was her conclusion that the replacement cost new value of the building and site improvements was \$\$\$\$\$ and depreciation would be 43%, resulting in a value for the building and site improvements of \$\$\$\$\$. She added the County's land value to this, which was \$\$\$\$\$, for a total cost indicator of \$\$\$\$\$.

The County argued that the Property Owner's requested lease rate at \$\$\$\$\$ was too low. The County's representative noted that the subject buildings averaged to a YEAR 3 construction and indicated that they would rent for more than the buildings constructed in YEAR 4 which had been the Property Owner's lease comparables. It was the County's conclusion that market rate lease rate was around \$\$\$\$\$ per square foot. The County presented ten lease comparables and the average of these was the \$\$\$\$\$ per square foot. The County also argued that the average vacancy rate for industrial buildings in the County had been 8%. The Property Owner had used 10% in its income indicator. The County stated that for a single tenant building, total expenses and reserves were typically 6%. The Property Owner had a total of 10%. The County's representative used a %%%% capitalization rate and did provide some comparables supporting that rate, although he was unable to provide information on what type of buildings these comparables had been. It was his conclusion from these factors that the indicated value for the subject was \$\$\$\$\$, but he recommended that the value remain as set by the County Board of Equalization.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County, but also provide an evidentiary basis to support a new value. Further, property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code §59-2-103. Although the Property Owner argues that the 2010 value should not have been higher than the 2009 value, there are other factors that might explain this difference, including the possibility that the 2009 value was in error. The focus in this appeal is the market value for the subject as of January 1, 2010.

The Property Owner's value is based on a rent rate of \$\$\$\$\$ per square foot. The actual lease rate of the building is \$\$\$\$\$. In light of all the lease comparables and listings presented, a rate of \$\$\$\$\$ is not supported. Using a rate of \$\$\$\$\$ and the other factors in the County's income approach would support at least the value set by the County Board of Equalization for this parcel. The Property Owner's representative was also not persuasive on the vacancy rate or expenses in

her income indicator. Given the age of the building, little weight would be given to a cost indicator. The value should remain as set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property as of the January 1, 2010 lien date to be as follows for each parcel. It is so ordered.

#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner