

13-121
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 8-26-14
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-121</p> <p>Parcel No. #####-1</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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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: REPRESENTATIVE-1 FOR PETITIONER, Attorney at Law
OWNER, Owner, Manger
REPRESENTATIVE-2 FOR PETITIONER, Certified General

Appraiser

For Respondent: RESPONDENT, 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 as allowed under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on May 6, 2014, in accordance with Utah Code §59-1-502.5. The Salt Lake

County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2012 lien date. The County Board of Equalization ("the County") reduced the value to \$\$\$\$\$. At the hearing the Property Owner requested a reduction to \$\$\$\$¹ and the appraiser also recommended a reduction, but to \$\$\$\$².

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 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.
- (5) 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.

¹ This was based on an appraisal conclusion for two parcels of property, the parcel that is the subject of this appeal, #####-1 and an associated parcel which has a different owner, parcel #####-2. Because these two properties have different owners, the parcels are not combined together for this decision. However, both appraisers provided a combined value for both parcels and neither appraiser broke out the value per parcel at the hearing. It is apparent that the parcel that is at issue in this appeal is the primary parcel to which most of the value is attributed as the County Assessor had valued parcel #####-2 at only \$\$\$\$.

² Also a combined value of the two parcels. Seen Note 1 above.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. 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 (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 located at ADDRESS-1 CITY-1, Utah. It is improved with a self-storage warehouse property. Parcel #####-1 is ##### acres in size. The improvements consist of ##### mini storage warehouse units that range in size from ##### feet by ##### feet to ##### by ##### foot (X) units. There is approximately ##### square feet of storage unit space. On this property there is also an office/residence of ##### square feet and a basement office of ##### square feet.

The subject property is located on ROAD and is adjacent to the INTERSTATE off ramps. The configuration of the off ramps to the freeway makes it difficult to access the subject property. The Property Owner states that legally you can only get into the property from one direction on ROAD, as if you are coming from the other direction you would have to cross two solid white lines. The Property Owner's representative also states that coming off of the freeway the traffic is fast and there is no traffic light to slow it down. A sound wall obstructs some of the visibility from INTERSTATE. It was the representative's contention that after INTERSTATE was reconfigured in this manner they did see a drop in rentals at this property.

The Property Owner submitted an appraisal to support its requested value of \$\$\$\$ for the subject parcel and a small related parcel, #####-2 which is only ##### acres in size. It is unclear which improvements if any are on the related parcel and it was assessed by the County at only \$\$\$\$\$. The appraisal had been prepared by REPRESENTATIVE-2 FOR PETITIONER, Certified General Appraiser. REPRESENTATIVE-2 FOR PETITIONER had considered both a sales comparison approach and an income capitalization approach. He noted that there were only a few comparable sales available and because of the lack of good sales placed the most weight on the income approach. He indicates he found that there was an adequate amount of quality rental comparables.

Of the sales that REPRESENTATIVE-2 FOR PETITIONER had found to consider in his appraisal, only two were located in Salt Lake County. The subject was a larger complex than any of the comparables and the comparable sales had occurred significantly prior to the lien date, which in this appeal is January 1, 2012. REPRESENTATIVE-2 FOR PETITIONER comparables are as follows:

Address	Sale Price	Sale Date	Square Foot	Price Per Square Foot
Subject ADDRESS-1, CITY-1			#####	
ADDRESS-2, CITY-2	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-3, CITY-3	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-4, CITY-4	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-5, CITY-5	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-6, CITY-6	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-7, CITY-7	\$\$\$\$	DATE	#####	\$\$\$\$
ADDRESS-8, CITY-8	\$\$\$\$	DATE	#####	\$\$\$\$

After reviewing the sales and making appraisal adjustments it was his conclusion that these sales indicated a value for the subject of \$\$\$\$ per square foot. One significant adjustment made by REPRESENTATIVE-2 FOR PETITIONER was for the time of sale. It was his opinion that the market was in decline from 2008 to the end of 2011 and, therefore, all the comparables received a negative time adjustment. For the two sales that had occurred in 2009 this adjustment was the highest at 20%. He also considered all the comparables to be in superior locations or to have superior configurations to the subject and made significant location/configuration adjustments in amounts from 10% to 25%. It was his conclusion that the comparable sales indicated a value for the subject of \$\$\$\$.

It was the income approach on which REPRESENTATIVE-2 FOR PETITIONER put the most weight in his appraisal. To determine the rental amount for each unit, REPRESENTATIVE-2 FOR PETITIONER did look at rents charged for other self-storage facilities that were located near the subject in CITY-1, CITY-9 or CITY-10. He also considered the quoted rate for new renters for the subject and the actual rates for the subject which he indicates were generally lower than the quoted rates. He concluded that the subject actual rates were generally at market, took the actual rents received from the subject as of February 2012 and multiplied that by 12 to get to an annual actual rental income of \$\$\$\$ and an additional \$\$\$\$ in other income for an annual income of \$\$\$\$\$. He indicated in the appraisal that his expenses were from a review of the expenses for the facility from 2007 through 2011. One point on his expenses that was

considerably higher than the County's, was the professional management and on-site manager expenses which was \$\$\$\$\$ or 20% of the income. In addition he added another 2% management fee because the property is in an IRA account that is managed by the BANK. Onsite management operates the property on a daily basis, but there is this oversight extra cost. With this and the other expenses the total was \$\$\$\$\$, which left a net operating income of \$\$\$\$\$. REPRESENTATIVE-2 FOR PETITIONER then considered capitalization rate information, and concluded a market capitalization rate of 8.7% which he used to capitalize the NOI for a value rounded of \$\$\$\$\$ for the economic unit.

The County did not submit a traditional, formal appraisal in this matter, but did provide an opinion of value. The County's submitted information was some aerial photographs, a calculation of an income indicator which the County's representative revised further at the hearing, historical vacancy information, expenses from a profit and loss statement provided by the Property Owners, cap rates comparables as well as a list of all sales of self-storage properties in the state which occurred from 2008 to 2011 and information regarding the Property Owner's comparables.

The Property Owner did argue in a post hearing submission that the County's "appraisal" did not comply with the Uniform Standards of Professional Appraisal Practice ("USPAP").³ The type of valuation information submitted by the County in this hearing is not considered by the Tax Commission to be a traditional formal appraisal. It is, however, market value evidence that is relevant and admissible in the administrative hearing and also of the type that may be deemed reliable for valuation the purposes. The Tax Commission does not require either party to submit a formal appraisal in its proceedings and often neither the property owner nor the County submit formal appraisals. The Commission's decision is based on the weight of all admissible evidence submitted, although generally, more weight is given to a formal appraisal, containing a licensed appraiser's signed opinion of value, than just sales comparables, income calculations and charts and graphs.

In the valuation information that was provided by the County's representative, RESPONDENT, Certified General Appraiser, was an income value calculated from a potential gross income of \$\$\$\$\$. This appears to be based on a comparison of "street rates" and actual rates. He allowed a vacancy rate of 18.1% and his effective gross income was then \$\$\$\$\$. As a point of comparison REPRESENTATIVE-2 FOR PETITIONER effective gross income was \$\$\$\$\$. The County's expenses were significantly lower than REPRESENTATIVE-2 FOR PETITIONER. At the hearing the County indicated the expense should be \$\$\$\$\$, based on the

³ The Tax Commission has no opinion on whether or not the County's submission complied with USPAP.

Property Owner's Profit and Loss statement for the period of January through December 2011. The County has used the actual expense from the Property Owner's balance sheet. One other difference was the \$\$\$\$ expense for property tax which the County generally does not include as an expense but takes into account in the effective tax rate. After subtracting the \$\$\$\$ in expenses, the County's NOI was \$\$\$\$\$. The County used a higher capitalization rate of 9% and added 1.30% for the effective capitalization rate to obtain an overall rate of 10.3%. This resulted in an income approach value for of \$\$\$\$\$.

The County also argued that the sales comparables used by REPRESENTATIVE-2 FOR PETITIONER were inferior to the subject property based on the rental rates. He did provide a list of all the Utah sales of self-storage properties from 2008 to 2011, but no appraisal adjustments. Seven of the twenty were from Salt Lake County and had sold for prices per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$ per square foot, but all were considerably smaller in size than the subject.

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 a sound 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 §59-2-103. Utah Code §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller. Both parties were in agreement that the value set by the County Board was too high as the representative for the County had also requested a lower value. The Property Owner has submitted a sound evidentiary basis to support a new value. They County did provide some valuation information that challenged some of the appraisal assumptions. For instance the County argued expense should be based on actual expenses for the entire 2011 year. The appraiser for the Property Owner indicates his higher expenses were based on a review of expenses for several years. Both parties differed on their calculation of the gross income, with the Property Owner using actual income for one month period and the County also a subjective calculation based on the percentage difference between the "street rates" and the "actual rates. Given, however, that the Property Owner had submitted a traditional formal appraisal, which offers an expert opinion of value and appears to have taken a more in-depth and detailed review of the subject and the valuation information, the better supported value was the Property Owner's appraisal value of \$\$\$\$\$. For the value of the parcel at issue the \$\$\$\$\$ needs to be subtracted as it is attributed to the related parcel. This results in a value of \$\$\$\$\$ for the subject parcel.

Jane Phan
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, 2012 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. 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 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner