13-1079
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2012
DATE SIGNED: 7-14-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 13-1079 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2012 Judge: Chapman

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:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, Property Tax Manager, TAXPAYER
For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

TAXPAYER ("Petitioner" or "taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("County BOE"). This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 3, 2014.

At issue is the fair market value of a distribution warehouse as of the January 1, 2012 lien date. The subject property is located at SUBJECT PROPERTY (approximately (X) South) in Salt Lake County, Utah. The County BOE sustained the $$$$$ value at which the subject property was assessed for the 2012 tax year. The taxpayer asks the Commission to reduce the subject's value to $$$$$. The County asks the Commission to sustain the subject's current value of $$$$$.

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 §59-2-102(12) defines "fair market value" to mean "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."

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 comprised of #####-acres of land and a distribution warehouse. The subject property's improvements are #####-square feet in size. Approximately 60% of the improvements were built in 1978, with the remainder built in 1992. The County indicates that the "weighted" year built of the subject's improvements is 1984, so that its age as of the 2012 lien date is 28 years old. Approximately 12% of the subject's space is finished (office space, break room, etc.). Both parties agree that the finished area is not "nice" office space, but is "industrial-type" office space.

The subject property is owner-occupied and serves as a hub for BUSINESS-1 ("BUSINESS-1"). The subject has ##### overhead doors at which packages are unloaded from semi truck trailers, which is an unusually high number of overhead doors for a warehouse the size of the subject property. About 85% of the subject's warehouse space has ceiling heights of 27'7", while the remaining 15% has ceiling heights of 39'8". The County indicates that the "weighted" ceiling height is 29'4". The County recently visited the subject property, at which time it obtained these measurements.

The subject building has some unusual characteristics specifically designed to service BUSINESS-1's package distribution system. For example, most distribution warehouses have loading docks that are about four feet in height so forklifts can unload the semi truck trailers directly into the warehouse. The subject's floors are located four feet lower (at ground level) to accommodate conveyor belts where the packages from the semi truck trailers are unloaded directly unto the belts. The subject's building has 650 conveyor belts in it.

In addition, inside the building are two "run-out concrete blocks" that run the length of the building. BUSINESS-1's smaller, (Y) delivery trucks park along both sides of these run-out blocks so that packages can be easily transported by conveyor belts to the trucks. The run-out blocks are two feet in height so that they are the same height as the floors of the (Y) trucks. Furthermore, the building has a "traverse pit" that runs along the length of the building to provide space to service the conveyor belts. The traverse pit is about two feet deep.

The subject's current value of $$$$$ equates to $$$$$ per square foot. The County BOE sustained the subject's original assessment, which was based on an income approach in which the subject's market lease rate was estimated at $$$$$ per square foot (annually), as follows:

#####	Rentable Sq. Ft.
x $$$$$	Market Rent Per Sq. Ft.
$$$$$	Potential Gross Income ("PGI")
- $$$$$	Vacancy & Collection Losses (8% of PGI)
$$$$$	Effective Gross Income ("EGI")
- $$$$$	Expenses (6% of EGI)
$$$$$	Net Operating Income ("NOI")
÷ %%%	Capitalization Rate
$$$$$	Approximate Value Derived with this Income Approach
+ $$$$$	"Tabling adjustment" to correct situations where a building's size has "prompted the table" to use an incorrect capitalization rate.
$$$$$	Final BOE Value

Based on the final value of $$$$$ and an NOI of approximately $$$$$, the effective capitalization rate would be %%%.

The taxpayer contends that the subject's current value is too high. The taxpayer proffers an appraisal in which the subject's value is estimated to be $$$$$ as of the 2012 lien date. In addition, the taxpayer stated that the subject's 2013 value was reduced from $$$$$ to $$$$$ on the basis of an appraisal it submitted for the 2013 lien date. Given this information, the taxpayer asks the Commission to reduce the subject's 2012 value to $$$$$.

The Commission generally does not establish a property's current year's value on the basis of the value at which it was assessed for a subsequent year or the value established by the local board for a subsequent year.[1] It is not known whether the local board's decision for 2013 was correct or whether it was based on information that is not before the Commission in the instant case. For these reasons, the Commission will give little, if any, weight to the fact that the local board reduced the subject property's value for the 2013 tax year. The Commission will make its decision on the evidence submitted by the parties at this hearing.

The taxpayer's appraiser has used an income approach to estimate the subject's value, as of the January 1, 2012 lien date, at $$$$$. The appraiser first estimated the square foot rate at which the subject property would be leased at $$$$$ per square foot monthly, which equates to $$$$$ per square foot annually. The appraiser then deducted vacancy of 8% and expenses of 5% to arrive NOI of $$$$$. The appraiser capitalized the NOI at 9% to arrive at a value of $$$$$. The appraiser then added $$$$$ to estimate the cost approach value of the subject's mezzanine space and deducted $$$$$ as the cost to cure the functional obsolescence associated with filling the pit area under the conveyor belt system, for a total positive adjustment of approximately $$$$$. With this methodology, the taxpayer's appraiser estimated a value of $$$$$ for the subject property.

The County contends that some aspects of the taxpayer's appraisal should be revised in order that the subject's value is not underestimated. The County objected to the taxpayer's contention that the subject property suffers from functional obsolescence. The taxpayer contends that another entity purchasing the subject property would pay less for the subject property than another warehouse because of the subject's unique characteristics that were designed to accommodate BUSINESS-1's package delivery needs, specifically the low warehouse floor, the run-out concrete blocks, and the traverse pit to service the conveyor belts. As a result, the taxpayer contends that its appraiser properly adjusted the lease rate comparables he used by a

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1 The Commission notes, however, that decisions for prior years may be considered in accordance with Utah Code Ann. §59-2-301.4.

negative 5% to account for the subject's low dock floors and that the appraiser properly deducted $$$$$ as the cost to cure the traverse pit that is used to service the conveyor belts.

The County contends, however, that the subject was built to accommodate BUSINESS-1's specific needs and that it might be more appropriate to value the subject with the cost approach, which would include the costs for the unusually high number of overhead doors found at the subject property. The County points out that there is a demand for the subject property with the features that exist in it because BUSINESS-1 requires a building with these features for its operations. As a result, the County contends that the Commission should not reduce the subject's value because of functional obsolescence associated with these features. The County proffers that the Commission has not deducted obsolescence under similar circumstances in other cases. As a result, the County contends that the adjustment the taxpayer's appraiser made for the low dock floors and the traverse pit should be removed from the taxpayer's appraisal.

If BUSINESS-1 planned to abandon the subject property in the near future, the taxpayer's argument that the unique features present in the subject property would diminish its fair market value would be more convincing. However, there is no indication that BUSINESS-1 plans to move from the subject property. As a result, there is a demand for the subject property with its unique characteristics, specifically a demand by BUSINESS-1 itself. Accordingly, the County's argument that the taxpayer's appraiser's adjustments for obsolescence should be removed from the taxpayer's appraisal is convincing.

In addition, the County contends that the taxpayer's appraiser estimated a market lease rate for the subject property that is too low for a number of other reasons. First, the taxpayer points out the taxpayer's appraiser's lease comparable #4 is the same comparable as his lease comparable #6, yet he shows different features (specifically, effective age and site coverage ratios) for the two comparables. The County proffers that it has checked the lease comparable and determined that the information provided for lease comparable #4 is correct and that the information provided for lease comparable #6 is incorrect. Second, the County points out that one of the taxpayer's seven lease comparables, comparable #3, is a modified-gross lease. The County contends that it is anomalous for a warehouse the age of comparable #3 to be leased on a modified-gross basis. It is the only comparable the taxpayer's appraiser used that is not a triple-net lease. For these reasons and because the taxpayer's appraiser adjusts this comparable to an adjusted lease rate that is 25% lower than the next lowest adjusted lease rate, the County asks the Commission not to consider this lease because it is an anomaly. The County's arguments concerning lease comparables #3 and #6 are convincing. As a result, they should not be considered when determining a market lease rate for the subject property.

Third, the County points out that the taxpayer's appraiser concluded that the subject's effective age is relatively close to its weighted actual age of #####- years, yet used effective ages for his comparables that were relatively lower than their actual ages. As a result, the County contends that the adjustments that the taxpayer's appraiser made for age should be reduced. This argument is not completely convincing. With the exception of comparable #7, which is the oldest comparable, the differences between the actual ages and the effective ages of the comparable is three or less years. The difference between the subject's weighted actual age of #####- years and its effective age of #####- years is three years. As a result, it is not evident that the taxpayer's adjustments for age are incorrect. Accordingly, no adjustment should be made to the taxpayer's appraiser's adjustments for age.

Fourth, the County criticizes the "concession" adjustments that the taxpayer's appraiser made to several of his comparables without any explanation as to why such adjustments are appropriate. The County, however, did not proffer that it had reviewed these leases and that it had determined that there were no concessions associated with these leases. The County has provided no information to show that these adjustments are incorrect. As a result, the taxpayer's appraiser's concession adjustments should not be eliminated.

Fifth, the County points out that the taxpayer's appraiser made adjustments for difference in "ceiling height" on the basis of the subject's ceiling height being 23'. Because the subject's weighted ceiling height is 29'4", the County contends that the taxpayer's appraiser's ceiling height adjustments are excessive. Because the County visited the property and measured its ceiling heights, this argument is convincing. Accordingly, the ceiling height adjustments will be revised upward by 6% to reflect a ceiling height of 29' for the subject property.

After these revisions are made to the taxpayer's appraiser, the five remaining lease comparables in the taxpayer's appraisal have adjusted lease rates that range, on a square foot basis, between $$$$$ and $$$$$ per month (or between $$$$$ and $$$$$ per year). None of them support the taxpayer's appraiser's use of a $$$$$ per square foot market lease rate. The median of these five revised adjusted lease rates, on a square foot basis, is $$$$$ per month ($$$$$ per year), and the mean is $$$$$ per month ($$$$$ per year). The mean and median of these adjusted lease rates are closer to the $$$$$ per square foot rate used to assess the subject property than the $$$$$ per square foot rate used by the taxpayer's appraiser to estimate a value for the subject property.

If a lease rate of $$$$$ per square foot were substituted into the taxpayer's appraiser's income approach, it would result in an income approach value of $$$$$. Adding the taxpayer's appraiser's $$$$$ value for the mezzanine to this amount would result in a revised value of $$$$$ for the subject property, which is greater than the subject's current value of $$$$$. For these reasons, the taxpayer's appraisal does not show that the subject's current value is incorrect.

The taxpayer also provided lease comparables of properties listed for rent in early 2014, more than two years after the 2012 lien date at issue in this appeal. These warehouses were offered for lease at rates ranging between $$$$$ and $$$$$ per square foot, with an average list price of $$$$$ per square foot. These asking lease rates do not show that the taxpayer's appraiser's $$$$$ per square foot estimated lease rate for the subject is correct. They better support the $$$$$ per square foot rate estimated by the County and the $$$$$ per square foot rate used to estimate a value for the subject in the preceding paragraph. Furthermore, the County has provided rates at which large warehouses leased in 2010 and 2011. Only 1 of the 11 leased at a rate of $$$$$ per square foot, and only 3 of the 11 leased at rates below $$$$$ per square foot. Without adjustments, it is unknown how these comparables would compare to the subject. However, they do not show that the taxpayer's appraiser's $$$$$ per square foot estimated lease rate for the subject is correct.

Lastly, both parties proffer comparable sales for consideration. The subject's current value of $$$$$ equates to $$$$$ per square foot. The taxpayer proffered five comparables sales and one listing. The five comparables sold between December 2008 and December 2012 for prices of $$$$$, $$$$$, $$$$$, $$$$$, and $$$$$ per square foot. However, many of these comparables do not include information as to age, number of loading docks, or ceiling height. Information for the comparable that sold for $$$$$ per square foot appears to indicate that it has no loading docks. Without more information about the comparables and adjustments to account for the differences, this information is insufficient to show that the subject's current value of $$$$$ per square foot is incorrect. The County provided seven comparable sales of large warehouses that sold between October 2010 and March 2012 for prices ranging between $$$$$ and $$$$$ per square foot. Most of these comparables are superior to the subject in age and ceiling height. Regardless, they do not show that the subject's current value is incorrect.

The taxpayer has the burden to show that the subject's current value is incorrect and to provide convincing evidence to support its proposed value. The taxpayer's information is insufficient to show that the subject's current value is incorrect. Accordingly, the subject's current value of $$$$$ should be sustained for the 2012 tax year.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject's current value of $$$$$ for the 2012 tax year. 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 ________________________, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner