

13-1150
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 8-12-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1, c/o TAXPAYER-2</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. 13-1150</p> <p>Parcel No. #####-1, #####-2, #####-3, #####-4, #####-5</p> <p>Tax Type: Property Tax Tax Year: 2012</p> <p>Judge: Marshall</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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Representative
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("County"). This matter was argued in an Initial Hearing on April 30, 2014 in accordance with Utah Code Ann. §59-1-502.5. Following are the assessed value, Board of Equalization value, County's requested value, and the Taxpayer's requested value for each of the parcels under appeal:

	Assessed Value	BOE Value	County's Value	Taxpayer's Value
#####-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-4	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-5	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

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

- (1) All tangible personal 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.

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 properties include parcel numbers #####-1, #####-2, #####-3, #####-4, and #####-5. The properties comprise the SHOPPING CENTER, located at ADDRESS in CITY. It is a total of #####-acres, and has ##### rentable square feet of retail space that was built in YEAR.

The Taxpayer's representative stated that the Taxpayer purchased the property at auction on DATE, 2012 for \$\$\$\$\$. The Taxpayer's requested values for each of the properties reflects its allocation of the purchase price. The Taxpayer's representative provided a copy of the settlement statement. He noted that there were charges in addition to the purchase price, specifically noting that the buyers obtained a loan to pay off a loan to the NAME OF LIVING TRUST in the amount of \$\$\$\$\$.

The Taxpayer's representative provided the marketing history for the subject property. He argued that the property was actively marketed, and was not a distressed sale. He provided a letter dated November 8, 2011 setting forth the marketing efforts of the property to that date. The letter indicated that the auction brochure had been sent out to 208 commercial brokers; they had four dates for visitors to inspect the property; and had sent out a total of eighteen Information Packets to potential bidders. The Taxpayer's representative noted that there were offers of \$\$\$\$\$ and \$\$\$\$\$; however, they were from parties who had not seen the property and ended up backing out and not coming to the auction.

The Taxpayer's representative argued that the subject property struggles because it does not have an anchor that draws a lot of foot traffic to the center. He stated that potential buyers also had concerns about the lease dates, as there were a number of tenants who had leases expiring between 2012 and 2014, and thus a fairly high risk of tenant turnover. He included in his information the Taxpayer's income statements and rent rolls for year-end 2011. He argued that the net operating income and purchase price support a capitalization rate of 11.34%, and noted that the County used a much lower capitalization rate.

The County's representative explained that there is a difference between his value and the purchase price because the subject was sold at an auction. He stated that auction sales rarely generate a sales price as high as they would if the property were left available on the open market for an extended period of time. He stated that based on his experience, in general, auction sales are much lower than sales from the open market. The County's representative noted that in the

Board of Equalization record it is acknowledged that the subject property sold for over \$\$\$\$\$ in 2007. He believes that had the property been exposed on the market for a longer period of time, it would have sold for more.

The County’s representative used a 9% capitalization rate. He provided information on five sales of shopping centers in Salt Lake, Weber, and Utah Counties. The capitalization rates ranged from 7.60% to 9.18%. He noted that his graph of capitalization rates shows a fairly straight line, with a small decline. He noted that the property that sold nearest the lien date had a 9.18% capitalization rate, while those that sold post-lien date were lower. He stated that the capitalization rate based on the purchase price is 11.61%, and is based on trailing income. He stated that the income approach is used to predict the present value of future income; and that in a declining market, the capitalization rate is expected to be higher.

The County’s representative calculated a value for the subject property based on the rent roll, income statement, and as if stabilized. Following are the income calculations prepared by the County’s representative:

	Rent Roll	Income Statement	Stabilized
Sq.Ft.	#####	#####	
Rent Rate	\$\$\$\$\$	\$\$\$\$\$	
PGI			\$\$\$\$\$
Vacancy			%%%
EGI	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Expenses	\$\$\$\$\$	\$\$\$\$\$	%%%
NOI	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Basic Cap Rate	%%%	%%%	%%%
Value	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Rent Loss			(\$\$\$\$\$)
Value			\$\$\$\$\$

The County’s representative stated that retail has struggled in the last few years, and there has been an over-supply. He acknowledged that the subject property does not have a major anchor, but stated that it does have two minor anchors, the BUSINESS-1 and BUSINESS-2. Because of that, he believes the value based on the Taxpayer’s Income statement is the best indication of value. He stated that he was comfortable using the same allocation of total value to each parcel as the Taxpayer had used.

In rebuttal, the Taxpayer’s representative stated that he believes the biggest difference in the County’s value and the purchase price is the capitalization rate. He stated that the Subject property has not generated the income indicated by the County’s “stabilized” income approach since 2008. He noted that four of the five capitalization rates provided by the County were post-lien date. He believes the PLAZA-1 would be a reasonable indication of the capitalization rate,

but he is unsure as to whether there are anchor tenants. He argued that the PLAZA-2 shopping center is most applicable, but that the capitalization rate was not 9.18%. He stated that he is familiar with the property, noting that he had previously represented the owner of the property. He stated that the property was originally listed at \$\$\$\$\$, but was anchored by a struggling (X) store. He stated that the listing showed an expected capitalization rate of 8.5%, based on the suggested net operating income. However, if the suggested net operating income were used with the actual sales price, it yielded a capitalization rate of 11.05%.

The County's representative stated that he is not sure how the 9.18% cap rate for the PLAZA-2 was derived, as someone else in their office had derived the capitalization rates for those sales. He speculated that perhaps the difference in capitalization rate could have been attributable to using a stabilized vacancy rate. He stated that he was trying to find capitalization rates for properties that were similar in size. He noted that there were not a lot of sales in the County, which is why he included the sales from Weber and Utah counties. He argued that the Taxpayer's sale is going to represent the low-end of the value range because it was an auction. He stated that in his experience, properties that sell at auction sell for less than those that are on the open market. He argued that it is unknown how much the highest bidder was actually willing to pay; once the second to last bidder drops out, the price is set. He argued this is much different than two brokers negotiating a price.

In closing, the Taxpayer's representative argued that at an auction of commercial property, typically it would represent the highest price. He stated that the auction company went through a lot of effort to market the property over a period of three months. He stated that bidding on the property started at \$\$\$\$\$, and as the price went up, the number of potential buyers would drop. He stated that the buyers are sophisticated; and that the buyer is based in NAME OF BEACH, purchased the property as an investor, and had completed their due diligence. He reiterated that the subject property is an older retail center without an anchor and a number of expiring leases, and noted that the subject property is still not operating at its stabilized rate. The Taxpayer's representative is of the opinion that the 2007 purchase price was too high, which is why the property ended up being turned over to the bank and auctioned.

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 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 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.

The Taxpayer's representative is asking the Commission to reduce the value of the subject properties to the purchase price of the subject. Typically, the recent purchase of a property would be a reliable indication of its value. However, the subject property was purchased at auction, which requires a higher level of scrutiny as an auction may not involve an entirely willing seller, and thus may not reflect an arm's length purchase price. The Taxpayer has not provided any evidence of other sales that would support its contention that the purchase price at auction represents market value.

The County's representative is asking the Commission to reduce the value of the subject property, and in support of that provided an income approach based upon the actual income and expenses of the subject property. The capitalization rate was supported by the sale of five comparable shopping centers. While the Taxpayer challenged the capitalization rate of one of the properties; the County's representative speculated that the capitalization rate represented what it would be at stabilized vacancy, but could not confirm that as he had not derived the capitalization rates from the sales. However, this is the only capitalization rate that was higher than 9%, the rate used by the County. The income calculation based on the actual income and expenses is the best indication of value for the subject properties, and those values should be reduced accordingly.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the values of the subject properties to be as follows:

	Value
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$
#####-5	\$\$\$\$\$

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:

Appeal No. 13-1150

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