

14-175
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 11-24-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

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. 14-175 Parcel Nos. #####-1 and #####-2 Tax Type: Property Tax Tax Year: 2013 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: REPRESENTATIVE-1 FOR PETITIONER, Representative
REPRESENTATIVE-2 FOR PETITIONER, Certified General
Appraiser, By Telephone
For Respondent: RESPONDENT, Certified General Appraiser

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization as provided by Utah Code §59-2-1006. This matter was argued in an Initial Hearing on July 28, 2014, in accordance with Utah Code §59-1-502.5. The lien date at issue in this appeal is January 1, 2013. There are two parcels at issue in this appeal which are

used together as one economic unit. The value originally set for each parcel by the Salt Lake County Assessor’s Office was sustained on appeal to the Salt Lake County Board of Equalization (“County”). At the hearing, although the representative for the County had submitted market information that suggested a higher value, he requested that the value remain as set by the County. The County’s value and the value requested by the Property Owner are as follows:

Parcel No.	County’s Value	Property Owner’s Value ¹
Parcel No. #####-1	\$\$\$\$	
Parcel No. #####-2	\$\$\$\$	
	\$\$\$\$	\$\$\$\$

APPLICABLE LAW

Utah Code §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 §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 §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

¹ Property Owner had the two parcels appraised as a single economic unit and so its value was a combined value.

- (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 parcels combined are ##### acres of land and as of the lien date were improved with eight industrial buildings totaling 55,063 square feet. Five of the buildings are Class S metal structures. Three are Class C block or brick structures. The lots are highly irregular and somewhat triangular in shape. They are bordered on one side by a large canal and on one side by INTERSTATE. There is a railroad spur that runs through the property and it is used by the Property Owner in its business. The buildings have been constructed at different times with the oldest in 1989 and the most recent as of the lien date in 2011. An additional building was constructed after the lien date in 2013. The site improvements include asphalt paved parking and driveway areas. The subject property has a high land to building ratio and excess land. In addition there is a ##### acre point of land that is separated from the main portion of these parcels by a canal.

The Property Owner submitted an appraisal in support of its requested value of \$\$\$\$\$. The appraisal had been prepared by REPRESENTATIVE-2 FOR PETITIONER, Utah Certified General Appraiser. In his appraisal REPRESENTATIVE-2 FOR PETITIONER had included the one building constructed in 2013, which had increased the rentable square feet to 59,223. At the hearing both parties agreed that the rentable square feet as of January 1, 2013, had been 55,063, so this change was made by REPRESENTATIVE-2 FOR PETITIONER'S to his appraisal conclusion during the hearing. He considered these buildings to have an effective age of 17. The subject building is owner occupied. In the Appraisal REPRESENTATIVE-2 FOR PETITIONER considered both an income and sales approach.

For his income approach he concluded a market lease rate of \$\$\$\$\$ per square foot per month based on four rent comparables which were as follows:

Address	Rentable	Office Ratio	Site Ratio ³	EA	Rent ²	Adjusted Rent
SUBJECT ADDRESS	59,223	1%	10%	17		
ADDRESS-1	56,532	12%	44%	20	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-2	56,391	0%	24%	30	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-3	49,123	3%	19%	25	\$\$\$\$\$	\$\$\$\$\$
ADDRESS-4	56,760	2%	53%	15	\$\$\$\$\$	\$\$\$\$\$

For differences between the subject and the comparables, REPRESENTATIVE-2 FOR PETITIONER did make appraisal adjustments. One of the adjustments he made was for the site coverage ratio. The buildings on the subject property covered only about 10% of the land. This was a site coverage ratio much smaller than any of the comparables, meaning that there was additional land on the subject available for further development. Despite that the subject had significant more land per building than the comparables, REPRESENTATIVE-2 FOR PETITIONER made positive adjustments ranging from only 3% to 10% for this factor. He also made adjustments for the percentage of office finish, ceiling height and other factors to determine the adjusted rate per square foot. He did not consider the rail spur to be an amenity or make an adjustment for that. It was his conclusion from this analysis that the market lease rate for the subject would be \$\$\$\$\$ per square foot per month, which equates to \$\$\$\$\$ per square foot per year. Using the lease rate of \$\$\$\$ \$per square foot per month, a 10% vacancy and collection loss, 3% management fees, 2% reserves and a capitalization rate of 8.75% resulted in a value for the buildings on the subject parcels as of the lien date of \$\$\$\$\$.

For the sales comparison approach, REPRESENTATIVE-2 FOR PETITIONER concludes a value of \$\$\$\$\$, based on a conclusion of \$\$\$\$\$ per square foot. The four properties he considered in this approach were:

Address	Price/Per Square Ft	Sale Date	Office Ratio	Site Ratio	Adjusted Price Per Square Ft.
SUBJECT ADDRESS			1%	10%	

² REPRESENTATIVE-2 FOR PETITIONER listed his rent per square foot per month in his appraisal. To get to the rent per square foot per year, which is how the County lists its rent rates generally, REPRESENTATIVE-2 FOR PETITIONER’S rents need to be multiplied by 12. For example, a lease rate of \$\$\$\$\$ per square foot per month is equivalent to \$\$\$\$\$ per square foot per year.

³ This is the site coverage ratio, which represents how much of the site is covered by buildings.

ADDRESS-5	\$\$\$\$/\$\$\$\$	1/12	30%	27%	\$\$\$\$
ADDRESS-6	\$\$\$\$/\$\$\$\$	8/12	40%	56%	\$\$\$\$
ADDRESS-7	\$\$\$\$/\$\$\$\$	12/12	6%	56%	\$\$\$\$
ADDRESS-8	\$\$\$\$/\$\$\$\$	3/12	9%	9%	\$\$\$\$

REPRESENTATIVE-2 FOR PETITIONER made appraisal adjustments for differences including the cite coverage ratio because of the excess land on the subject. These adjustments, however, ranged only from 5% to 10%, even though the subject had a substantially lower site coverage ratio. He did not adjust for the rail spur as an amenity. He used only 1% for office ratio, although at the hearing after some discussion the Petitioner’s representative acknowledged that there was a finished lab building that increased the finished area of the buildings to 11%. He made other appraisal adjustments taking into account age, condition, ceiling height and percentage of office space, to conclude from these sales that the subject would sell for \$\$\$\$ per square foot, or \$\$\$\$ based on the 55,063 square feet of building space that was in existence on the lien date.

The County did not submit a traditional, formal appraisal, but the County’s representative, RESPONDENT, Certified General Appraiser, had submitted an income approach using lease comparables to determine market rent rates. Unlike REPRESENTATIVE-2 FOR PETITIONER, the County had concluded that ##### of the acres was surplus land, subtracted that from the ##### acres, and had calculated his land to building ratio from the remaining ##### acres of land. Even using only the ##### acres, the subject’s land to building ratio was much higher than the comparables. RESPONDENT made an adjustment for the higher land to building ratio in his comparables as well as added \$\$\$\$ for the ##### acres of surplus land. The lease rate that RESPONDENT concluded for the subject was \$\$\$\$ per square foot per year, which was significantly higher than the rate that REPRESENTATIVE-2 FOR PETITIONER used of \$\$\$\$ per year. RESPONDENT lease comparables were the following:

Address	Rentable	Office L/B Ratio	L/B Ratio ⁴	Year Built	Rent Per Sq Foot	Adjusted Rent
SUBJECT ADDRESS	55,063	11% ⁵	7.50	1993		

⁴ The County calculated this factor as a land to building ratio, rather than a site coverage percentage, either is a measure of land size compared to the building size.

⁵ A difference between the County and Property Owner’s information was the percentage of finished area in the buildings. The County indicated the percent at 11% while the Property Owner’s appraiser had considered the percentage to be 1%. After discussion, however, the Property Owner conceded that a lab building was finished area, as had been calculated by the County.

ADDRESS-9	65,000	8%	2.39	1995	\$\$\$\$	\$\$\$\$
ADDRESS-10	63,802	13%	2.23	1997	\$\$\$\$	\$\$\$\$
ADDRESS-11	58,516	6%	1.85	1999	\$\$\$\$	\$\$\$\$
ADDRESS-1	56,532	12%	2.39	1990	\$\$\$\$	\$\$\$\$
ADDRESS-12	28,000	11%	2.78	1995	\$\$\$\$	\$\$\$\$
ADDRESS-13	30,222	5%	1.90	1992	\$\$\$\$	\$\$\$\$
ADDRESS-14	26,350	5%	2.19	2005	\$\$\$\$	\$\$\$\$

In his income approach, with the lease rate of \$\$\$\$ per square, RESPONDENT concluded an 8% vacancy rate, 3% for reserves, 3% for expenses and a capitalization rate of 8.50% which calculated to a value of \$\$\$\$\$. This was a value for the buildings that were on the property as of the lien date and the ##### acres of land. RESPONDENT then added \$\$\$\$ for the additional ##### acres of surplus land. The total value then for all of property was \$\$\$\$ for both parcels of property. Although this was higher than the County Board of Equalization's value of \$\$\$\$\$, he recommended that the value remain as set by the County Board.

The County did not submit a sales comparison approach. One big difference between the County's value and REPRESENTATIVE-2 FOR PETITIONER appraisal value was the excess or surplus land of the subject. RESPONDENT separated the land into a #### acre portion and a ##### acre portion. He used the ##### acre portion in his lease comparable grid and even with this portion of land concluded a much higher land to building ratio than any of the comparables. He made a 15% adjustment just for the ##### acres of land. Then in addition RESPONDENT added the \$\$\$\$ for the ##### acres of surplus land. These two land adjustments were substantially higher than REPRESENTATIVE-2 FOR PETITIONER'S adjustments, which had been only 3% to 10% for the full ##### acres. RESPONDENT did argue that even so, he had valued the surplus land at only 50% of market value to account for the problems including the irregular shape and separation of one portion by a canal.

Another difference between the two parties was the lease rate. REPRESENTATIVE-2 FOR PETITIONER'S rate of \$\$\$\$\$, was substantially lower than RESPONDENT rate of \$\$\$\$\$. It was the County's contention that the lab building should be considered as part of the finished square feet, which the representative for the Property Owner did not refute. If counted in the finished square feet, that percentage was increased to 11% rather than the 1% used by the Property Owner. Therefore, the adjustments made by REPRESENTATIVE-2 FOR PETITIONER would have to be recalculated and it would result in a higher rent rate than the one used by REPRESENTATIVE-2 FOR PETITIONER. A second factor that affected the lease rate was RESPONDENT treatment of the rail spur line. RESPONDENT considered the rail spur to be an amenity and he made a 5% adjustment to the subject for having the line as compared to the

comparables, none of which had the rail spur line. RESPONDENT pointed out that this line was used by the Property Owner in its business and it would have been useful for these types of businesses.

After considering the appraisal information of REPRESENTATIVE-2 FOR PETITIONER, the County has sufficiently shown that the appraisal value does not adequately account for the surplus land, the correct percentage of finished space of the subject, or the rail spur. Applying adjustments similar to those done by the County for these three items to REPRESENTATIVE-2 FOR PETITIONER comparables does support the value set by the County Board of Equalization. Additionally, it should be noted that the County has also found comparables that support a higher lease rate in general. 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 parcels as of the lien date January 1, 2013, to be \$\$\$\$ for parcel no. #####-1 and \$\$\$\$ for parcel no. #####-2. 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.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner