

14-299
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 12-30-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 14-299</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</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 FOR PETITIONER, Representative by Telephone
For Respondent: RESPONDENT, Commercial 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 Sec. §59-2-1006. This matter was argued in an Initial Hearing on September 30, 2014, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office had originally valued the subject property at \$\$\$\$\$, as of the

January 1, 2013 lien date. The County Board of Equalization (“the County”) upheld that value. At this hearing the Property Owner is requesting the value of the subject property be reduced to \$\$\$\$\$ to \$\$\$\$\$. The County requests no change in value.

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.

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 parcel-#####, located at SUBJECT ADDRESS, CITY-1, Utah. The property is a #####-acre parcel improved with a light industrial manufacturing building. The building was constructed in YEAR. It has #####-rentable square feet, is a Class B rental and considered by the County to be Class C construction. The building has 18% office finish and an average clear height of #####-feet. With the land parcel the County considers only #####-acres to support the building and considering just the #####- acres it is a #####-land to building ratio. The County considers that #####-of the acres are available for further development. Based on the County's information, the subject property had sold in MONTH YEAR for \$\$\$\$\$ and was listed as a state of the art manufacturing building at that time. The County also notes that this property has good access from STREET-1 and is located in a good area of the County for manufacturing. The County's assessment at \$\$\$\$\$ is \$\$\$\$\$ per square foot of building inclusive of all the acreage including the excess land.

The Property Owner did not submit a traditional formal appraisal, but submitted a valuation analysis including sales comparables and an income approach. From the sales comparables the Property Owner had concluded a value of \$\$\$\$\$ or \$\$\$\$\$ per square foot. Four comparables were provided, all considerably distant in location to the subject and all having both much smaller buildings with considerably smaller land to building ratios. The Property Owner had made only a 5% adjustment for the land to building ratio. In its adjustments the Property Owner used the full #####-acres. The Property Owner's comparables were as follows:

Address	Price/Per Square Foot	Sale Date	Size	Land to Bld Ratio	Office	Clear Height
Subject: SUBJECT ADDRESS			#####	#####	%	# ¹
ADDRESS-1, CITY-2	\$\$\$\$/\$\$\$\$\$	DATE	#####	#####	%	#'
ADDRESS-2, CITY-1	\$\$\$\$/\$\$\$\$\$	DATE	#####	#####	%	#'
ADDRESS-3, CITY-2	\$\$\$\$/\$\$\$\$\$	DATE	#####	#####	%	#'
ADDRESS-4, CITY-2	\$\$\$\$/\$\$\$\$\$	DATE	#####	#####	%	#

¹ This is an average clear height number provided by the County. Portions of the subject are ##### feet and portions ##### feet.

It was the County’s position that the property Owner’s comparables were significantly different from the subject as far as location, clear height and land to building ratio. It was also the County’s contention that the Property Owner did not adequately account for the additional acreage on the property that could be used for further development.

The Property Owner’s representative provided an income approach. It was his conclusion from that approach that the indicated value was \$\$\$\$\$ or \$\$\$\$\$ per square foot. In this calculation the property owner determined that a market lease rate for the subject was \$\$\$\$\$ from listings for leases of industrial buildings. Because these were not actual leases, but instead listings, the representative made a 20% adjustment off the lease list price. The Property Owner’s lease listings were as follows:

Address	List Rate Per Square Foot	Size	Land to Bld Ratio	Office	Clear Height
Subject: SUBJECT ADDRESS, CITY-1			#####	%	# ²
ADDRESS-5 CITY-1	\$\$\$\$\$	#####	#####	%	#’
ADDRESS-6 CITY-1	\$\$\$\$\$	#####	#####	%	#’
ADDRESS-7, CITY-1	\$\$\$\$\$	#####	#####	%	#’
ADDRESS-8, CITY-1	\$\$\$\$\$	#####	#####	%	#’

After determining a market lease rate of \$\$\$\$\$ per square foot from these listings, the Property Owner used a 10% vacancy rate, 10% expenses and an 8% capitalization rate to calculate the value of \$\$\$\$\$ for the building. The Property Owner’s representative did not make adjustments to the lease comparables for the differences in the percentage of office space, ceiling height or land to building ratio.

The County supported its value with comparable sales. The County had separated the land into two parts, comparing the building and the ##### acres to sales of light industrial/manufacturing buildings and then obtaining land comparables for the ##### additional acres of the subject parcel. The County’s building comparables were the following:

² This is an average clear height number provided by the County. Portions of the subject are ##### feet and portions ##### feet.

Address	Price Per Square Foot	Sale Date	Size	Land to Bld Ratio	Office	Clear Height
Subject: SUBJECT ADDRESS			#####	#####	%	#'
1) ADDRESS-9	\$\$\$\$\$ ³	DATE	#####	#####	%	#'
2) ADDRESS-10	\$\$\$\$\$	DATE	#####	#####	%	#'
3) ADDRESS-11	\$\$\$\$\$	DATE	#####	#####	%	#'
4) ADDRESS-12	\$\$\$\$\$	DATE	#####	#####	%	#'
5) ADDRESS-13	\$\$\$\$\$	DATE	#####	#####	%	#'
6) ADDRESS-14	\$\$\$\$\$	DATE	#####	#####	%	#'
7) ADDRESS-15	\$\$\$\$\$	DATE	#####	#####	%	#'

It was the County’s conclusion that these comparables supported a value for the building and the #####-acres of land around \$\$\$\$\$ per square foot which was higher than the County’s assessment of \$\$\$\$\$ per square foot and this did not account for the value of the excess #####-acres of land which could be developed.

The County provided five vacant land sales to the additional value of the #####-acres of excess land. These were properties that had sold for prices per square foot ranging from \$\$\$\$\$ to \$\$\$\$\$. The County concluded from these sales a mean sale price of \$\$\$\$\$ per square. Multiplied by the #####-square feet of this, excess land would be a value of \$\$\$\$\$ for just this portion of the land. However, the County’s assessed value at \$\$\$\$\$ per square foot was supported by the County’s sales of buildings and the first #####-acres, without allowing any value for this excess land acreage.

The Property Owner noted that several of the County’s comparables were portfolio sales. These sales had been made by investors who acquired multiple properties in one transaction and generally the properties had leases in place. The County’s comparables 1 and 2 were portfolio sales involving multiple properties and the County did not know how the buyer and seller had allocated the purchase price between properties. The County’s comparable 6 was also a portfolio sale, but the allocation was provided by the buyer or seller for that property. The Property Owner’s representative also stated that the County’s comparable buildings were mostly distribution warehouse buildings while the subject was manufacturing. He noted that there was a difference because distribution warehouses have numerous elevated docks for trucks to back up

³ This was the purchase price listed by the County. However, after questions during the hearing, the County’s representative explained that this amount was an allocation made by the County based on capitalization rates from a portfolio sale involving multiple parcels. The County did not know how the buyer had allocated the purchase price.

to the doors. Manufacturing warehouses tend to be ground level and have fewer dock doors. They also note that you generally cannot retrofit a manufacturing building to be a distribution warehouse. Another concern the representative had with the County's sales was that several were multi-tenant and had leases in place. He argued that they purchaser was acquiring a leased fee interest.

After review of the information provided, the sales offered by the Property Owner and comparables used to determine a market rent were very dissimilar properties and had many factors that were inferior to the subject. Although, there were some differences between the subject and the sales offered by the County, the County's sales supported a value much higher than that set by the County Board when the value of the excess land is taken into consideration. The County's allocated prices for the portfolio transactions are less reliable than a sale price for a single specific property. Additionally, it is preferable that the County clearly state in its written evidence that the sale price was an allocation made by the County from a portfolio sale and not a price reported by the buyer/seller. However, although the Property Owner's representative argues that the sales subject to leases were leased fee values, he has not established that properties with leases in place would sell for more than owner occupied properties to the extent it would affect the fair market value. There is the chance that a tenant defaults on a lease and an investment buyer would generally still consider whether the purchase price is fair market value. Under Utah law, property tax is based on the fair market value of the property. See Utah Code §59-2-103. Utah Code §59-2-102 defines "fair market value" as the amount for which the property would exchange hands between a willing buyer and seller. These comparables are being exchanged between willing buyers and sellers. The value should remain as set.

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, 2013 lien date. 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 or emailed 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

Or Emailed to:

taxappeals@utah.gov

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