14-322
TAX TYPE: PROPERTY TAX/ LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 11-7-2014
COMMISSIONERS: J. VALENTINE, D. DIXON, R. PERO
EXCUSED: M. CRAGUN

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. 14-322 Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2013 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-1 FOR TAXPAYER, Representative (by telephone)
REPRESENTATIVE-2 FOR TAXPAYER, Representative (by telephone)
For Respondent: RESPONDENT, from the Salt Lake County Assessor’s Office (by telephone)

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 September 3, 2014.

At issue is the fair market value of a mobile home park as of the January 1, 2013 lien date. The subject property is located at SUBJECT PROPERTY in Salt Lake County, Utah. The County BOE sustained the $$$$$ value at which the subject property was assessed for the 2013 tax year. The taxpayer asks the Commission to reduce the subject's value to $$$$$. The County asks the Commission to sustain the subject's current value of $$$$$.

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 consists of #####-acres of land that is improved with a mobile home park that contains ##### mobile home lots. It was built in YEAR. The subject's original value of $$$$$, which the County BOE sustained, was derived with the following income approach to value:

$$$$$[1]	Number of Mobile Home Lots
x $$$$$	Annual Rent Per Mobile Home Lot ($$$$$ monthly rent X 12 months)
$$$$$	Potential Gross Income ("PGI")
- $$$$$	Vacancy & Collection Losses (10% of PGI)
$$$$$	Initial Effective Gross Income ("EGI")
+ $$$$$	Miscellaneous Income
$$$$$	Final EGI
- $$$$$	Expenses (38% of Final EGI)
$$$$$	Net Operating Income ("NOI")
÷ %%%	Capitalization Rate of about 7.5% plus Effective Property Tax Rate of about1.0%
$$$$$	Value Derived with this Income Approach (Rounded)

To contest the subject's current value, the taxpayer proffered an income approach with which it estimated a value of $$$$$ for the subject property. The taxpayer asks for the subject's 2013 value to be reduced to $$$$$ on the basis of this income approach, as follows:

$$$$$	Number of Mobile Home Lots
x $$$$$	Potential Rent Per Mobile Home Lot ($$$$$ actual monthly rent X 12 months)
$$$$$	Initial PGI
+ $$$$$	Potential Miscellaneous Income from water, sewer, and trash ($$$$$ per lot)
$$$$$	Revised PGI
- $$$$$	Vacancy & Collection Losses (7% of Revised PGI)
$$$$$	Initial EGI
+ $$$$$	Other Miscellaneous Income - actual
$$$$$	Final EGI
- $$$$$	Actual Expenses (excluding property taxes and management fees)
- $$$$$	Management Fees (3% of Initial EGI)
- $$$$$	Reserves based on $$$$$ per lot per year (which is approx. 3.5% of Initial EGI)
$$$$$	NOI
÷ %%%	Capitalization Rate of 9.9% plus Property Tax Rate of 0.983%[2] (Rounded)

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1 Both parties agree that the subject property has #####-lots instead of the #####-lots used in the County's original income approach.

2 The taxpayer used the property tax rate applicable to the subject property for the 2012 tax year to estimate an effective tax rate for 2013. The taxpayer states that it did not have the 2013 tax rate when it

\$\$\$\$\$	Value Derived with this Income Approach

The County, like the taxpayer, did not submit a traditional, formal appraisal in this matter. However, RESPONDENT, a County appraiser, prepared a new income approach to value for the County, in which he estimated the subject's 2013 value to be \$\$\$\$\$. The County does not ask the Commission to increase the subject's value. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$ on the basis of its new income approach, as follows:

\$\$\$\$\$	Number of Mobile Home Lots
x \$\$\$\$\$	Potential Rent Per Mobile Home Lot (\$\$\$\$\$ actual monthly rent X 12 months)
\$\$\$\$\$	PGI
- \$\$\$\$\$	Vacancy & Collection Losses (5% of PGI)
\$\$\$\$\$	Initial EGI
+ \$\$\$\$\$	Potential Miscellaneous Income[3]
\$\$\$\$\$	Revised EGI
- \$\$\$\$\$	Actual Expenses (excluding management fees and deposit refunds)
- \$\$\$\$\$	Management Fees (3% of PGI)
- \$\$\$\$\$	Reserves (3% of PGI)
\$\$\$\$\$	NOI
÷ %%%	Capitalization Rate of 6.5% plus Property Tax Rate of 1.01519%[4]
\$\$\$\$\$	Value Derived with this Income Approach

NOI. The taxpayer derived an NOI of \$\$\$\$\$ in its income approach, whereas the County derived an NOI of \$\$\$\$\$ in its new income approach. The majority of the difference between these two NOI's is due to the taxpayer's use of a 7% vacancy rate in comparison to the County's use of a 5% vacancy rate. First, however, one other adjustment should be made to the taxpayer's calculation of NOI. The taxpayer deducted

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initially prepared its information for the County BOE and that it did not revise its income approach once the 2013 tax rate was available.

3 Includes about \$\$\$\$\$ of "SLVLESA tax" that is shown on the taxpayer's operating statement but which the taxpayer did not include as miscellaneous income. The taxpayer's representative did not know what the income was for, but stated that taxes collected and paid to a governmental entity would not be income for the taxpayer. It is also noted that RESPONDENT did not apply any vacancy deduction to the miscellaneous income he included in this income approach, even though the miscellaneous income he uses reflects 100% occupancy and even though he has sometimes applied the vacancy deduction to miscellaneous income for other properties.

4 The County used the property tax rate applicable to the subject property for the 2013 tax year to

$$$$$ of "deposit refunds" as an expense, even though the taxpayer does not include "deposits received" as income. It seems preferable to exclude deposits from the calculation of income completely, as the County did. Accordingly, the taxpayer's NOI should be adjusted upward by $$$$$ to remove this expense.

As to the vacancy rate, the subject's *actual* vacancy rate as of the lien date is about 1%. The taxpayer uses a 7% vacancy rate in its income approach, but provided no information that would support this rate. In its new income approach, the County used a 5% vacancy rate to reflect a Marcus & Millchap published vacancy rate of 4.2% for mobile home assets in the CITY-1 metro area for the second half of 2013. The subject property is less than ##### years old, and there is no information showing that the historical vacancy and collections loss rate for the subject property has ever been above 5%. In fact, as of the lien date, it is only 1%. For these reasons, the County's 5% vacancy rate is more persuasive and should be used to calculate NOI.[5]

If the taxpayer's calculation of NOI is revised to remove the $$$$$ of "deposit refunds" from expenses and to reflect a 5% vacancy rate, the taxpayer's NOI would be approximately $$$$$, which is relatively close to the County's NOI of $$$$$. However, there are questions concerning the amount of miscellaneous income the County included, specifically whether its miscellaneous income amount reflects 100% occupancy and whether it included some taxes that were forwarded to a governmental entity. As a result, the taxpayer's revised NOI amount of $$$$$ will be used to determine whether or not the subject's current value is reasonable.

<u>Capitalization Rate</u>. Regardless of which parties' NOI amount is used, the parties' income approach values are almost $$$$$ apart primarily because of the widely disparate capitalization rates that they used to capitalize their NOI's. Before adding the effective property tax rate, the taxpayer used a capitalization rate of 9.9%, whereas the County used a rate of 6.5%.

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determine an effective tax rate of 1.01519%.

5 It is noted that the County originally assessed the subject property with a 10% vacancy rate, which

Originally, the County assessed the subject property with an income approach derived with a capitalization rate of approximately 7.5%, which the County BOE sustained. RESPONDENT, however, has used a 6.5% capitalization rate in the County's new income approach. To support this lower capitalization rate, the County proffered 32 capitalization rates obtained from sales of *apartment complexes* that are located along the Wasatch Front and which sold between 2009 and 2013. The capitalization rates at which these apartment complexes sold ranged between 5.18% and 8.70%, with a mean capitalization rate of 6.17%. However, these rates are not persuasive because there is no evidence to show that apartment complexes and mobile home parks sell at the same capitalization rates. Furthermore, even had information been available to show that apartment complexes and mobile home parks sell at the same capitalization rates, the County would have needed to provide more information about its 32 comparables for the Commission to know which of them were most similar to the subject property.

The County did proffer one comparable sale of what it identified as a "mobile home park sale" with ##### spaces. This property is located in CITY-2 near INTERSTATE, and it sold in May 2013 at a capitalization rate of 6.30%. The taxpayer, however, proffered evidence about this comparable to show that it was the sale of two houses with three apartments and ##### spaces for RV parking. Given this information, the County admitted that this comparable was not a very convincing comparable with which to determine the subject's capitalization rate. Based on the foregoing, the County's proposed capitalization rate of 6.5% is not persuasive.

To support its proposed 9.9% capitalization rate, the taxpayer proffered RERC (Real Estate Research Corporation) information for Tier 3 properties (the lower classification) showing that the capitalization rates for Tier 3 *hotels* ranged between 7% and 13%, with an average rate of 9.9%. The taxpayer's RERC information is not persuasive. First, this 9.9% average capitalization rate for hotels was the lowest average capitalization rate

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the County BOE sustained. However, there is no evidence to support a rate above 5%.

shown for any property class in the RERC information. There is no information to show that an average capitalization rate for hotels is reflective of the capitalization rate at which a mobile home park in Salt Lake County would sell. Second, it is also noted that the taxpayer's RERC information shows that the average capitalization rate for Tier 3 *apartments* is 7.5%. The taxpayer has not shown why capitalization rates for hotels are more applicable to a mobile home park than capitalization rates for apartments. Third, the taxpayer proffered other information that suggests that a mobile home park's capitalization rate should be lower than the 9.9% rate it proposes. Specifically, the taxpayer's 2013 Marcus & Millchap information for manufactured housing assets indicates that the capitalization rates for Class B/C properties in the Mountain states range between 6% and 9%, depending on quality and location. This information suggests that the subject's capitalization rate may be less than 9%, because the subject is located in a relatively large metropolitan area.

The taxpayer does provide three comparable sales of mobile home parks in Utah to support a capitalization rate between 9.00% and 9.57%, but none to support a 9.9% rate. One of the comparables is a #####-lot mobile home park in CITY-3, Utah that sold in *2000* at a capitalization rate of 9%. This comparable, however, sold more than 12 years prior to the 2013 lien date and is too old to show what capitalization rate would be appropriate for the subject property as of January 1, 2013.

The taxpayer's other two comparables are mobile home parks with #####-lots and #####-lots, respectively, that are located in RURAL COUNTY, Utah (the city or cities in which they are located is unknown). These two comparables sold in November 2013 and January 2014 (about one year after the 2013 lien date) at capitalization rates of 9.27% and 9.57%. It would appear, however, that the subject's capitalization rate may be less than the capitalization rates for the two mobile home parks in RURAL COUNTY because the subject property is located in a relatively large metropolitan area and because the Marcus & Millchap information suggests that capitalization rates depend, in part, on location. It is also questionable whether these two comparables are, in fact, comparable to the subject property. They sold for prices that equate to approximately $$$$$ and $$$$$ per lot, whereas the taxpayer's proposed value of $$$$$ for the subject property equates to approximately $$$$$ per lot. Furthermore, there is little information provided about the two RURAL COUNTY comparables (such as their ages, rental rates, vacancy rates, etc.) to know if the subject property is as risky an investment as they were.

For these reasons, the information proffered at the Initial Hearing does not support the taxpayer's proposed capitalization rate of 9.9%. The information, instead, suggests that the subject's capitalization rate should be lower than 9%. The County BOE sustained an income approach value derived with a capitalization rate of approximately 7.5%. After adding the 2013 effective property tax rate to this capitalization rate and applying the total rate to the taxpayer's revised NOI of $$$$$ (as derived earlier), it produces a value of approximately $$$$$, which is significantly higher than the subject's current value of $$$$$. Even a capitalization rate close to 9% would support the subject's current value. If the effective property tax rate were added to a capitalization rate of 8.65% and the total rate were applied to the taxpayer's revised NOI of $$$$$, it would produce a value of $$$$$, which is still higher than the subject's current value of $$$$$.

In conclusion, even if the taxpayer's revised NOI of $$$$$ is a better reflection of NOI than the County's NOI of $$$$$, the evidence does not support a capitalization rate that, when applied to this NOI of $$$$$, would produce a value for the subject that is less than its current value of $$$$$. For these reasons, the taxpayer has not met its burden to show that the subject's current value is too high. Accordingly, the Commission should sustain the subject's current value of $$$$$ for the 2013 tax year.

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 2013 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.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner