14-323
TAX TYPE: PROPERTY TAX/LOCALLY ASSESSED
TAX YEAR: 2013
DATE SIGNED: 11-3-2014
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN
EXCUSED: R. PERO

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. 14-323 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 ADDRESS in CITY-1 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. The subject's original value of $$$$$, which the County BOE sustained, was derived with the following income approach to value:

#####	Number of Mobile Home Lots
x $$$$$	Annual Rent Per Mobile Home Lot ($$$$$ monthly rent X 12 months)
$$$$$	Potential Gross Income ("PGI")
- $$$$$	Vacancy & Collection Losses (10% of PGI)
$$$$$	Initial Effective Gross Income ("EGI")
+ $$$$$	Miscellaneous Income
$$$$$	Final EGI
- $$$$$	Expenses (38% of Final EGI)
$$$$$	Net Operating Income ("NOI")
÷ %%%	Capitalization Rate of about 7.7% plus Property Tax Rate of approximately 0.8%
$$$$$	Value Derived with this Income Approach (Rounded)

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

#####	Number of Mobile Home Lots
x $$$$$	Potential Rent Per Mobile Home Lot ($$$$$ actual monthly rent X 12 months)
$$$$$	Initial PGI
+ $$$$$	Miscellaneous Income from reimbursed expenses not in rent ($$$$$ per lot)
$$$$$	Revised PGI
- $$$$$	Vacancy & Collection Losses (10% of Revised PGI)
$$$$$	Initial EGI
+$$$$$	Other Miscellaneous Income - beauty shop (actual) and gas (at $$$$$ per lot)
$$$$$	Final EGI
- $$$$$	Actual Expenses (excluding property taxes and management fees)
- $$$$$	Management Fees (3% of Initial EGI)
- $$$$$	Reserves based on $$$$$ per lot per year (which is approx. 3.3% of Initial EGI)
$$$$$	NOI
÷ %%%	Capitalization Rate of 9.9% plus Property Tax Rate of 0.764%[1] (Rounded)

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

$$$$$ 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 for the County, in which he estimated the subject's 2013 value to be $$$$$. The County does not ask the Commission to increase the subject's current value. However, on the basis of RESPONDENT'S income approach, the County asks the Commission to sustain the subject's current value of $$$$$. RESPONDENT derived his income approach value as follows:

$$$$$	Number of Mobile Home Lots
x $$$$$	Potential Rent Per Mobile Home Lot ($$$$$ actual monthly rent X 12 months)
$$$$$	Initial PGI
+ $$$$$	Potential Miscellaneous Income (excluding beauty shop income)
$$$$$	Revised PGI
- $$$$$	Vacancy & Collection Losses (5% of Revised PGI)
$$$$$	EGI
- $$$$$	Actual Expenses (excluding management fees and deposit refunds, but including property taxes)
- $$$$$	Management Fees (3% of Initial PGI)
- $$$$$	Reserves (3% of Initial PGI)
$$$$$	NOI
÷ %%%	Capitalization Rate of 6.5% plus Property Tax Rate of 0.809325%[2]
$$$$$	Value Derived with this Income Approach

NOI. There appears to be some errors in both parties' approaches that would affect their calculations of NOI. The taxpayer's approach appears to contain several possible errors, some of which could increase its NOI, while others could decrease it.[3] The County, on the other hand, has accounted for the property tax

2 The County used the subject's 2013 property tax rate to determine an effective tax rate of 0.809325%.

3 First, the taxpayer deducted returned deposits 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. Second, the taxpayer, unlike the County, did not include any insurance cost as part of the expenses. Third, the taxpayer's operating statement indicates that it may have collected some "other" income, and it is not clear that the taxpayer included this when calculating income. It is unknown whether the "other" income should be included because the taxpayer's representative stated that he did not know what it was for.

expense twice in its income approach, once as part of its expenses deduction and then again by adding the subject's effective property tax rate to its capitalization rate. Removing the property tax expense from the expenses deduction would increase the NOI derived by the County.

If the County's "double-counted" property tax expense were removed its calculation of NOI, the main difference between the two parties' NOI amounts is related to the vacancy rates they used. The taxpayer used a 10% vacancy rate to reflect the subject's actual vacancy rate, which was around 10% as of the lien date. The County, on the other hand, used a 5% vacancy rate to reflect a Marcus & Millchap published vacancy rate of 4.2% for mobile home assets in the Salt Lake City metro area for the second half of 2013. In RESPONDENT'S income approach, if the "double-counted" property tax expense is removed from the expenses deduction and if the vacancy rate is increased to the 10% rate used by the taxpayer, the County's revised NOI would be almost identical to the taxpayer's NOI.[4] As a result, the primary issue in determining an NOI for the subject property is for the Commission to determine whether the taxpayer's use of a 10% vacancy rate or the County's use of a 5% vacancy rate is more persuasive.

It is unclear if the 10% vacancy the subject was experiencing on the lien date is typical for the subject property or if it is temporarily high because the taxpayer's representative did not know what the subject's historical vacancy rates have been in recent years. If the subject property's historical vacancy rate is around 10%, estimating NOI with a 10% vacancy rate would be more appropriate than using the County's proposed 5% rate, which would likely overestimate the NOI the property will be able to generate in the future. However, if the subject's actual vacancy rate of 10% is atypically high as of the lien date and its future vacancy rate is expected to be lower, using the County's 5% vacancy rate as a "stabilized" rate may be more appropriate to estimate the income that the subject will generate in the future.

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4 Specifically, the County's revised NOI would be approximately $$$$$, which would be within 1% of the taxpayer's NOI of $$$$$.

Nevertheless, the taxpayer's use of a 10% vacancy rate to estimate the subject's NOI is more persuasive in this case. First, the taxpayer explained that the subject property, which was built in YEAR, is a relatively old mobile home park and that buyers of new mobile homes do not move them into older parks like the subject. As a result, the taxpayer contends that the customers who rent mobile home lots in the subject property are generally older and have lower income levels that cause more issues with vacancy and collections. Second, the taxpayer noted that the County had previously used a 10% vacancy rate in the income approach that the County BOE sustained. Third, the County's use of a "stabilized" vacancy rate of 5% that is lower than the subject's actual vacancy rate of 10% indicates that the County's believes that the subject's current vacancy rate is excessive and only temporary. However, the County did not calculate any short-term losses associated with the excess vacancy that will exist until the subject property is "leased up" and deduct these losses from the "stabilized" income approach value it derived with a lower vacancy rate.[5] For these reasons, the taxpayer's 10% vacancy rate is more persuasive. Consequently, the taxpayer's NOI of $$$$$ is more persuasive than the County's NOI and should be used in an income approach to determine the subject's value.

<u>Capitalization Rate</u>. Regardless of the NOI amount used in the income approach, the parties' income approach values are more than $$$$$ apart primarily because of the widely disparate capitalization rates that they used to capitalization 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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5 Because commercial properties typically sell on the basis of the income that they will generate in the future, a property with higher, temporary vacancy will typically sell for less than an identical property that is fully leased because the former will incur short-term losses while it is being leased up. Usually in such circumstances, Salt Lake County calculates the amount of short-term losses that a property with excess vacancy will incur during this lease-up period and deducts this amount from the income approach value it derives with the stabilized vacancy rate. The County has not done so in this case, even though it acknowledges that the subject's actual vacancy rate as of the lien date was higher than the stabilized vacancy rate it used to calculate the subject's NOI.

Originally, the County assessed the subject property with an income approach derived with a capitalization rate of approximately 7.7%, 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 REGION 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 ##### houses with ##### 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 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. 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, though aging, 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 (X) 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 (X) 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 (X) 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 7.7%. After adding the effective property tax rate to this capitalization rate and applying the total rate to the taxpayer's NOI of $$$$$, it produces a value of approximately $$$$$, which is significantly higher than the subject's current value of $$$$$. Even a capitalization rate close to 9% would support the subject's current value. If the effective property tax rate were added to a capitalization rate of 8.75% and the total rate were applied to the taxpayer's NOI of $$$$$, it would produce a value of $$$$$, which is still higher than the subject's current value of $$$$$.

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