

14-892
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 3-30-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</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. 14-892</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-1 FOR TAXPAYER, Representative, By Telephone
REPRESENTATIVE-2 FOR TAXPAYER, Certified General Appraiser, By Telephone

For Respondent: RESPONDENT, 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 §59-2-1006. This matter was argued in an Initial Hearing on December 16, 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") sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$ based on an appraisal. The representative for the County asked that the value remain as set by the County Board.

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 located at SUBJECT ADDRESS, CITY, Utah. This property is a #####-acre parcel of land that is improved with an office building. It is an owner occupied property. The building has ##### square feet and was constructed inYEAR. The building is Class B Building located in a suburban area with an average overall construction quality. The property is located near the STREET-1 and STREET-2 intersection. The land is zoned M-1, for light manufacturing which also allows for office buildings.

The Property Owner had an appraisal prepared, which was submitted to support its requested value of \$\$\$\$\$. In the appraisal an income approach was considered. The County did not submit a formal appraisal, but did submit an income approach calculation and market information. It should be noted, however, in comparing the two income approaches, the Property Owner's appraisal had been calculated based on triple net leases, while the County's was based on full service leases. Because of this, rent rates and expenses were widely divergent.

The Property Owner's appraisal had been prepared by REPRESENTATIVE-2 FOR TAXPAYER, Utah State Certified General Appraiser. The subject building is owner occupied. REPRESENTATIVE-2 FOR TAXPAYER went to rent comparables to conclude a market rent for this property. He included six comparables in his appraisal. Of the six, four were triple net leases and two were actually full service leases. He converted the full service leases to triple net by subtracting out \$\$\$\$\$ per square foot for the additional expenses associated with full service. His lease comparables were the following:

Address	Rent	Lease	Lease	Adjusted Rental
SUBJECT ADDRESS				
ADDRESS-1	\$\$\$\$\$	DATE	NNN	\$\$\$\$\$
ADDRESS-2	\$\$\$\$\$	DATE	NNN	\$\$\$\$\$
ADDRESS-3	\$\$\$\$\$	DATE	Full	\$\$\$\$\$
ADDRESS-4	\$\$\$\$\$	DATE	NNN	\$\$\$\$\$
ADDRESS-5	\$\$\$\$\$	DATE	Full	\$\$\$\$\$
ADDRESS-6	\$\$\$\$\$	DATE	NNN	\$\$\$\$\$

From these comparables REPRESENTATIVE-2 FOR TAXPAYER concluded a lease rate for the subject of \$\$\$\$ per square foot. Of the comparables provided, the one property that was the most near in location to the subject was the comparable at ADDRESS-5 and although that lease rate was \$\$\$\$ per square foot, it was a full service lease. After adjusting it to a triple net lease and making an adjustment for superior quality of construction, he had concluded that this lease supported the \$\$\$\$ per square foot rate.

REPRESENTATIVE-2 FOR TAXPAYER deducted a 12% vacancy rate which was the same market rate used by the County in the County’s approach. Because he was using the triple net lease rates, REPRESENTATIVE-2 FOR TAXPAYER subtracted only 5% of the effective gross income as management fee and reserves. A difference between the triple net and full service lease income approaches is that REPRESENTATIVE-2 FOR TAXPAYER did not include property tax or insurance as expenses, nor was the property tax rate added to the capitalization rate.¹ REPRESENTATIVE-2 FOR TAXPAYER net operating income calculation was \$\$\$\$ to which he divided a 9% capitalization rate. His conclusion was a value for the property of \$\$\$\$.

The County’s representative argued that office spaces generally leased based on full service rather than triple net leases. The County argued a full service lease rate of \$\$\$\$ per square foot. The County did provide a list of lease comparables to support this rate. These were all presented as full service lease rates. The County did not make any appraisal adjustments to lease rates based on the differences. The County’s lease comparables were the following:

Address	Rent Date	Lease Class	Rental
SUBJECT ADDRESS			B
ADDRESS-7	\$\$\$\$	DATE	C
ADDRESS-8	\$\$\$\$	DATE	B
ADDRESS-9	\$\$\$\$	DATE	B
ADDRESS-10	\$\$\$\$	DATE	B
ADDRESS-11	\$\$\$\$	DATE	B
ADDRESS-12	\$\$\$\$	DATE	C
ADDRESS-13	\$\$\$\$	DATE	C
ADDRESS-14	\$\$\$\$	DATE	B

¹ In a triple net lease, the tenant pays the property tax and property insurance.

It was the County's conclusion from the lease information that a full service rent rate was \$\$\$\$\$ for the subject property. Like the Property Owner, the County had applied a 12% vacancy rate to the PGI. Because this was a full service income calculation the expenses were much higher than those used in the REPRESENTATIVE-2 FOR TAXPAYER appraisal. The expenses were 32% of the effective gross income, or an expense rate of \$\$\$\$\$ per square foot, plus 3% for reserves. The County did use a lower capitulation rate than had REPRESENTATIVE-2 FOR TAXPAYER and provided publications supporting the lower rate. While REPRESENTATIVE-2 FOR TAXPAYER had been at 9%, the County used 8.5% as the capitalization rate. The County added the property tax rate or loaded the capitalization rate for a "Total" cap rate of 10.222%. The County's conclusion was a value of \$\$\$\$\$, however, the County did not ask that the value be increased.

The County pointed out that one of its leases was for the same property as had been used in the REPRESENTATIVE-2 FOR TAXPAYER appraisal, but the County had used a lease rate from nearer the lien date, while REPRESENTATIVE-2 FOR TAXPAYER had used an older rate. This was the property at ADDRESS-5. In REPRESENTATIVE-2 FOR TAXPAYER'S appraisal, a portion of this property had leased for \$\$\$\$\$ per square foot with a lease date of May 2011. The County's lease from this same building had leased for \$\$\$\$\$ per square foot in September 2012 much nearer the lien date. In fact overall, REPRESENTATIVE-2 FOR TAXPAYER'S leases did predate the lien date significantly with four of the six leases he used occurring in 2011 and the remaining two leases in May of 2012. The County did provide several reports from REAL ESTATE COMPANY-1 which indicated for Class B buildings, lease rate increasing from 2011 into 2012 and 2013. Therefore, by using the older lease rates it was supporting a lower value. Conversely several of the County's leases occurred after the January 1, 2013 lien date and it appeared from the same publication that the rates were going up in 2013. However, even if the post lien date leases were not considered, the County's rate at \$\$\$\$\$ was well supported by the County's leases occurring in January 2013 or late in 2012.

The Property Owner did have a criticism with the County's comparable that had leased for a rate of \$\$\$\$\$ per square foot, which was the highest rate of all the comparables. It was the representatives' position that this had been a short term lease and there had been substantial concessions, so that this lease should not be considered. Again, even removing this lease and the County's post lien date leases, the remaining County leases still support the \$\$\$\$\$ full service lease rate.

One additional factor argued by the Property Owner's representatives was that the County did not allow sufficient expenses for its full service income approach. The County's

expenses had been \$\$\$\$ per square foot. The Property Owner submitted a report from REAL ESTATE COMPANY-2 which supported expenses for a full service lease of \$\$\$\$ per square foot. If this is used in the County's Income approach with all other of the County's rent and capitalization rate factors being the same it does indicate a reduction to \$\$\$\$.

After reviewing the information provided by the parties, the value should be reduced to \$\$\$\$.

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. 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, 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 _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

