

14-1021
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR; 2013
DATE SIGNED: 6-5-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,¹</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 14-1021</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2013</p> <p>Judge: Chapman</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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
 REPRESENTATIVE-2 FOR TAXPAYER, Attorney
 REPRESENTATIVE-3 FOR TAXPAYER, from TAXPAYER

For Respondent: RESPONDENT, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

1 When the Petitioner filed its Request for Redetermination, it identified the owner of the subject property as TAXPAYER County records, as well as the appraisal proffered by the taxpayer, indicate that the owner is actually TAXPAYER.

Appeal No. 14-1021

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 January 14, 2015.

At issue is the fair market value of a medical office building as of the January 1, 2013 lien date.² The subject property is located at SUBJECT ADDRESS in CITY-1, Utah and is known as the TAXPAYER CLINIC. 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 \$\$\$\$\$.

The County assessed the subject property using an income approach with which it determined a single value of \$\$\$\$\$ for the subject’s land and improvements together. The County determined a separate value of \$\$\$\$\$ for the subject’s land, which it deducted from the \$\$\$\$\$ total value to derive a remainder value of \$\$\$\$\$ for the subject’s improvements.³ The taxpayer does not contest the County’s remainder value of \$\$\$\$\$ for the subject’s improvements. The taxpayer’s proposed value reflects a reduction in the County’s land value only. Specifically, the taxpayer asks the Commission to reduce the subject’s land value from \$\$\$\$\$ to \$\$\$\$\$, which would reduce the subject’s total value from \$\$\$\$\$ to \$\$\$\$\$.

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.”

2 The subject property is partially exempt from taxation. The 2013 exemption percentage of the subject property is 75%, which neither party is contesting.

3 Records in the County BOE file indicate that since at least 2008, the County has used the income approach to determine a single value with which to assess the subject’s land and improvements together.

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 is comprised of #####-acres of land and a two-story medical office building that was built in YEAR. The medical office building has #####-square feet of “rentable” space, which the County has classified as Class A rental space. Because the subject property is owner-occupied, no actual leases exist for the property. The County assessed it with an income approach using market lease rates. The County BOE sustained the \$\$\$\$ assessed value that the County had derived with the following income approach:

#####	Rentable Sq. Ft.
x \$\$\$\$\$	Market Rent Per Sq. Ft. (based on a <i>triple net</i> lease rate)
\$\$\$\$\$	Potential Gross Income (“PGI”)
- \$\$\$\$\$	Vacancy & Collection Losses (10% of PGI)
\$\$\$\$\$	Effective Gross Income (“EGI”)
- \$\$\$\$\$	Expenses (10% of EGI)
\$\$\$\$\$	Net Operating Income (“NOI”)

$\frac{\div}{\text{}} \text{ \% \% \%}$ Capitalization Rate
\$\$\$\$\$ Value Derived with this Income Approach (Rounded)

Taxpayer's Information. The subject's #####-acres of land is currently assessed at \$\$\$\$\$, which equates to \$\$\$\$\$ per square foot. To show that the subject's land value is too high, the taxpayer proffered an appraisal of the subject's #####-acres of land. The taxpayer's appraisal was prepared by APPRAISER-1, APPRAISER-2, and APPRAISER-3, who are all appraisers with BUSINESS-1. The taxpayer's appraisal indicates that it is subject to a hypothetical condition and an extraordinary assumption, specifically: 1) the land is appraised under the hypothetical condition that there are no building improvements on the property; and 2) the land is appraised under the assumption that the subject property must provide an access easement, as well as roadway and suitable utilities, to a rear site (which is a separate parcel owned by TAXPAYER that is adjacent to the subject property). Under this extraordinary assumption, the taxpayer's appraisers refer to the subject property as a "servient parcel."⁴ Given this hypothetical condition and extraordinary assumption, the taxpayer's appraisers have used the sales comparison approach to determine that the fair market value of the subject's #####-acres of land is \$\$\$\$\$ as of the January 1, 2013 lien date.

For their sales comparison approach, the taxpayer's appraisers compared the subject's land to five comparable land sales that sold between September 2011 and December 2012 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The five comparables ranged between ##### and #####-acres in size. The

4 The "rear site" referred to in this extraordinary assumption is also owned by TAXPAYER and has previously been the subject of an appeal before the Tax Commission in *USTC Appeal No. 11-1977* (Findings of Fact, Conclusions of Law, and Final Decision Jul. 22, 2013) (Commissioner Dixon dissented). The taxpayer explained that the Commission's decision about the rear parcel's value in *Appeal No. 11-1977* prompted it to appeal the subject property's value in the instant case. In *Appeal No. 11-1977*, the taxpayer had argued that the rear parcel's value was diminished because it does not have access to a public road. In that appeal, however, the Commission accepted the County's argument that a reduction in the rear parcel's value to account for its lack of access was unnecessary because TAXPAYER owned both the rear parcel and the adjacent parcel (the subject property in this appeal) through which access was available. In *Appeal No. 11-1977*, the Commission concluded that the rear parcel was not landlocked and that its value required no adjustment for lack of access.

taxpayer’s appraisers adjusted the comparables for location, access, size, zoning/use, and street orientation and derived adjusted sales prices ranging between \$\$\$\$ and \$\$\$\$ per square foot. The mean of the five adjusted sales prices was \$\$\$\$ per square foot. With this information, they estimated a value of \$\$\$\$ per square foot for the subject’s land (exclusive of any detriment from the access that must be provided to the rear parcel).

At \$\$\$\$ per square foot, the #####-acre subject property would have a land value of \$\$\$\$. However, the taxpayer asked its appraisers to “appraise the [subject’s land] under the assumption that [it] must provide an access easement, as well as roadway and suitable utilities, to allow access to a rear site.” Given this assignment, the taxpayer’s appraisers estimated an “easement value” of \$\$\$\$ and “roadway and utility costs” of \$\$\$\$, which total \$\$\$\$. When the taxpayer’s appraisers deducted this \$\$\$\$ amount from the \$\$\$\$ value they had derived with comparable sales, they arrived at a final estimate of value of approximately \$\$\$\$ for the subject’s #####-acres of land (which equates to \$\$\$\$ per square foot). On the basis of this evidence, the taxpayer asks the Commission to reduce the subject’s land value to \$\$\$\$, which would reduce the subject’s total value to \$\$\$\$.

County’s Information. The County did not prepare a traditional appraisal for the subject property. However, RESPONDENT, a County appraiser, prepared a new income approach for the subject property, in which she estimated a single value of \$\$\$\$ for the subject’s land and improvements together, as follows:

#####	Rentable Sq. Ft.
x \$\$\$\$	Market Rent Per Sq. Ft. (based on a <i>full service</i> lease rate) ⁵
\$\$\$\$	Potential Gross Income (“PGI”)
- \$\$\$\$	Vacancy & Collection Losses (%%% of PGI)
\$\$\$\$	Effective Gross Income (“EGI”)

5 RESPONDENT used four lease comparables to derive her full service market lease rate of \$\$\$\$ per square foot. Two of her comparables were full service leases that leased at rates of \$\$\$\$ and \$\$\$\$ per square foot. Her other two comparables were triple net leases that leased at rates of \$\$\$\$ and \$\$\$\$ per square foot, which she adjusted upward to reflect full services leases. After all adjustments, she derived adjusted lease rates ranging between \$\$\$\$ and \$\$\$\$ per square foot. The taxpayer did not suggest a different lease rate to use in the income approach or suggest that any other component was incorrect.

Appeal No. 14-1021

- \$\$\$\$\$	Reserves Amount (3% of EGI)
- \$\$\$\$\$	Expenses (\$\$\$\$ per square foot)
\$\$\$\$\$	Net Operating Income (“NOI”)
÷ % % %	Capitalization Rate of 8.00% plus Property Tax Rate of 1.60%
\$\$\$\$\$	Value Derived with this Income Approach

The County, however, does not ask the Commission to increase the subject’s 2013 value to \$\$\$\$\$. On the basis of RESPONDENT income approach, the County asks the Commission to sustain the subject’s current value of \$\$\$\$\$.

The County indicated that while hospitals are typically valued on a cost approach, medical office buildings like the subject property are often leased and, thus, are typically valued using the income approach. The County also stated that it was not going to argue with the \$\$\$\$ per square foot value that the taxpayer’s appraisers initially estimated for the subject’s land (before reducing the land’s value for easement, roadway, and utilities) because the taxpayer has not shown that the subject’s total value is too high.⁶ The County stated that because no evidence has been provided to show that the subject’s total value is too high, any adjustment to the subject’s land value would necessitate a corresponding increase in its remainder improvements value so that the total value remained the same.

The taxpayer did not refute the lease comparables that RESPONDENT used in her income approach other than to say the subject’s lease rates would be negatively impacted because of increased traffic on the driveway that the subject and the rear parcel both share. The County, however, pointed out that even if the easement value of \$\$\$\$ and roadway and utility costs of \$\$\$\$\$, as estimated by the taxpayer’s appraisers, were deducted from its new income approach value of \$\$\$\$\$ to account for the increased traffic, the subject’s value would still be \$\$\$\$\$, which is significantly higher than its current value of \$\$\$\$\$.

6 The County did disagree with the easement, roadway, and utilities adjustments of \$\$\$\$ that the taxpayer’s appraisers made when estimating a final value of \$\$\$\$ per square foot for the subject’s land.

Appeal No. 14-1021

The taxpayer countered that it should be able to contest the subject's land value without the subject's improvements value or its total value being considered. The Commission, however, has found otherwise for properties where a single value for land and improvements together has been determined for assessment purposes (i.e., where the improvements value is a "remainder" value that has not been determined separately with a cost approach). *See USTC Appeal No. 08-0628* (Initial Hearing Order Oct. 16, 2008),⁷ in which the Commission stated:

In most instances, the value of a residential property is derived through a market approach that establishes a total value for the property without regard to the individual land and improvements values. How a County may have allocated that total value between land and improvements is, generally, immaterial when the Commission reviews the fair market value of a residential property.

The values of many commercial properties are determined with an income approach, which like the market approach used for residential properties, establishes a single total value for a property with little regard to the individual land and improvements values. As a result, for a property whose value is best determined with an income approach, it is the total value that is material, not the individual land and improvements values.

The evidence suggests that the subject's value is best determined with a valuation method that establishes a single total value for the property. As a result, the taxpayer's proposal to consider the subject's land value without regard to its total value is not appropriate for this particular property.

For purposes of this decision, the Commission need not even reach the issues of whether the subject's land value is too high or whether the adjustments that the taxpayer's appraisers made to account for easement,

⁷ *See also USTC Appeal No. 14-546* (Initial Hearing Order Feb 6, 2015). Redacted versions of these and other selected Commission decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

The Commission notes that it has determined that separate land and improvements values may be material when the Commission is reviewing a property where a county assessment is the sum of a separate land value and a separate improvements value derived with the cost approach. *See USTC Appeal No. 09-3842* (Initial Hearing Order Nov. 11, 2010). However, the subject's improvements value was not determined with a cost approach. Accordingly, this decision does not apply to the subject property.

roadway, and utilities to the rear parcel are appropriate. The County's new income approach value of \$\$\$\$\$, which the taxpayer has not shown to be incorrect, is the best evidence of the subject's total value. This new income approach value supports the subject's current value of \$\$\$\$\$, even if the subject's land value is too high. Any adjustment to the subject's land value would be offset by a corresponding adjustment to its improvements value so that the subject's total value remained unchanged.

Furthermore, the new income approach value of \$\$\$\$\$ also supports the subject's current value, even if it were appropriate to adjust the value downward by \$\$\$\$\$ to account for the easement, roadway, and utilities to the rear parcel.⁸ Such an adjustment to the new income approach value would result in a value for the subject property of \$\$\$\$\$, which is still significantly higher 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

⁸ The taxpayer's appraisers made these adjustments to the subject parcel to account for the adjacent rear parcel, whose value had previously been addressed in *Appeal No. 11-1977*. This rear parcel and the subject parcel are both owned by TAXPAYER. In *Appeal No. 11-1977*, the Commission concluded that the rear parcel's value was not diminished because TAXPAYER also owned the subject parcel through which access to a public roadway could be provided to the rear parcel. Because TAXPAYER still owns both of these parcels, it is unlikely that access adjustments are appropriate for the subject property.

Furthermore, it is not clear that the subject property's value is diminished because it is adjacent to the rear parcel. First, if a value reduction actually existed in these circumstances, it would seem that the parcel without access (i.e., the rear parcel) would be the parcel whose value is diminished, not the parcel located on the public roadway (i.e., the subject property). Second, it appears that a roadway already exists to the rear parcel, and the taxpayer's appraisers indicated that they do not know whether utilities already exist to the rear parcel. Third, even if a roadway and utilities to the rear parcel did not exist, there is no evidence to suggest that it would be TAXPAYER and not a potential buyer who would pay to install the roadway or utilities. Fourth, it is unclear whether the taxpayer's appraisers, who were not present at the Initial Hearing, would have concluded that the subject's land value is diminished by \$\$\$\$\$ because of TAXPAYER'S ownership of the rear parcel had their appraisal assignment not included the extraordinary assumption previously discussed.

Appeal No. 14-1021

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject property's current value of \$\$\$\$ for the 2013 tax year. The County may allocate this value between land and improvements as it sees fit. 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