

14-163
TAX TYPE: PROPERTY TAX
TAX YEAR: 2013
DATE SIGNED: 11-5-2014
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN
EXCUSED: R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

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| <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. 14-163</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2013</p> <p>Judge: Marshall</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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
For Respondent: RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on June 18, 2014 in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2013 lien date, which the Board of Equalization sustained. The County is asking the Commission to lower the value to \$\$\$\$\$. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

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, parcel no. #####, is located at SUBJECT ADDRESS in CITY-1. It is a #####-acre parcel improved with a mixed-use retail and office building that was built in YEAR. The building has ##### square feet of leasable area.

The Taxpayer's representative stated that the units in the building are primarily open spaces, which he does not believe are very valuable. He stated that at some point he would like to tear the building down and re-build. He stated that over time, the building has operated at about 60% occupancy. He stated that the downturn in the economy helped, as tenants were looking for lower-cost space. He also noted that there was a development across the street that was torn down, and they were able to gain some of the former tenants. The Taxpayer stated that he does not believe the building increased in value and the economy was down, yet the County increased the value.

The Taxpayer's representative stated he believes the value of the subject is \$\$\$\$\$. He submitted a listing for a property located at ADDRESS-1 in CITY-2. It is #####-acres and has ##### total square feet. The asking price on that property is \$\$\$\$\$ per square foot. He stated that the subject is older and in an inferior location, so he believes this would represent the high-end of the value. The Taxpayer's representative noted that he does not have access to a lot of sales, and this is the only one he could find within ten miles of the subject.

The Taxpayer's representative stated that the subject property is located on the west side of CITY-1, where prices are more depressed. He stated that the area is blighted; the streets are in need of repair and the buildings are older and show their age. He stated that there is an old service station that blights the whole corner. He also noted that large electrical transformers were recently installed in front of the building, making the area unsightly. In addition, the Taxpayer's representative stated that there is limited development potential because there is not room to grow. He noted that BUSINESS-1 is to the west, the tailings pond is to the north, and BUSINESS-2 is to the south.

The Taxpayer's representative stated that the County is not taking into consideration one of their largest expenses, because it is not represented on their tax forms. He explained that in 2011, the Taxpayer had work done to repair water damage at a total cost of \$\$\$\$\$; being paid at \$\$\$\$\$ per year. He explained that approximately \$\$\$\$\$ of that was spent on the roof, and that only covered part of the roof. He stated that the middle section of the building still needs to be repaired because it leaks, and noted that the east and west sides of the roof are still leaking to some extent.

The Taxpayer’s representative stated that even after those repairs, there continues to be a lot of problems with the building and the property in general. He believes the subject will have more expenses in the future than buildings of similar age. He stated that they have a flooding problem every time it rains, water comes into the building. He explained that the grade is as steep as it can be, but because the asphalt has been reapplied over time, it is now higher than the sidewalks in front of the building, and water runs in. The Taxpayer’s representative stated that he met with someone several weeks before the hearing to look at different options to correct the problem. He was given a rough estimate of \$\$\$\$\$ to repair, but stated he does not have a firm bid. He also noted that ice build-up in the winter has caused extreme damage to the back of the building, with a large section of the north side of the building deteriorating.

The County’s representative determined a value of \$\$\$\$\$, using the income approach. Following are the County’s income calculations:

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|-----------------------------|--------------|
| Potential Gross Income | \$\$\$\$\$ |
| Stabilized Vacancy 12.4% | (\$\$\$\$\$) |
| Effective Gross Income | \$\$\$\$\$ |
| Expenses | (\$\$\$\$\$) |
| Net Operating Income | \$\$\$\$\$ |
| Capitalization Rate | %%% |
| Tax Rate | %%% |
| Overall Capitalization Rate | %%% |
| Indicated Value | \$\$\$\$\$ |
| Rent Loss | (\$\$\$\$\$) |
| Value | \$\$\$\$\$ |

The County’s representative stated that he looked at the current lease rates, which had a weighted average of \$\$\$\$\$ per square foot. He stated that the Taxpayer had replied to a County mailer, as well as provided IRS Form 8825 showing expenses. He stated that both showed the same expenses, so he used the Taxpayer’s actual expenses in his calculation. The vacancy rate was taken from the information published in the 2013 symposium. In support of the capitalization rate, the County’s representative provided a spreadsheet of comparable properties that sold between January 2010 and March 2014. He determined a capitalization rate of 7.66% as of the lien date; but used a 9% capitalization rate, as buildings built before 1978 tended to have higher capitalization rates. The County’s representative also took a rent loss of \$\$\$\$\$.

The County’s representative stated that the \$\$\$\$\$ per year being paid for the repairs done in 2011 is not an expense they can consider for the current lien date. He stated that the funds were already expended, and it would not be treated any differently than a mortgage. He noted that his income approach did not include reserves, but they would not come close to the \$\$\$\$\$ a year the Taxpayer has been paying for the repairs. The County’s representative stated that arguably a

higher capitalization rate could be used, but at the time he developed his income approach, he used the information available to him. He stated that some allowance should be made for the issues with the flooding, and remaining roof repairs that need to be done; however, he is not sure what that amount would be.

In closing, the Taxpayer's representative stated that he appreciates the County's explanation and the reduction in value; however, he does not believe he could sell the property for \$\$\$\$\$.

In seeking a value other than that established by the board of equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide a sound evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue, under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "market value" as the amount for which property would exchange hands between a willing buyer and seller.

Reviewing the information presented by the parties, the value of the subject property should be no more than \$\$\$\$\$, which is supported by the County's income approach. However, the County's representative was unaware of, and therefore failed to make adjustments for, necessary repairs to the roof of the subject and to address flooding issues. The County's representative acknowledged an adjustment should be made, but was unsure as to the amount. The Taxpayer's representative proffered that he was given a rough estimate of \$\$\$\$\$ for the repairs. Absent any other evidence or testimony; given the County's determined value of \$\$\$\$\$, excluding the costs to cure, the Taxpayer's requested value of \$\$\$\$\$ for the subject property seems appropriate.

Jan Marshall
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

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Formal Hearing. Such a request shall be mailed 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

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