

15-118  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2014  
DATE SIGNED: 11-13-2015  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL  
EXCUSED: R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</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;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 15-118</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2014</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 send the response via email to [taxredact@utah.gov](mailto:taxredact@utah.gov), or via mail to the address listed near the end of this decision.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Representative  
REPRESENTATIVE-2 FOR PETITIONER, PETITIONER  
For Respondent: RESPONDENT, Certified General 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 Sec. §59-2-1006. This matter was argued in an Initial Hearing on August 4, 2015, 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,

2014 lien date. The County Board of Equalization (“the County”) sustained that value. At the hearing, the Property Owner requested a reduction to \$\$\$\$\$. The County is asking the Commission to uphold its value at \$\$\$\$\$.

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 than as set by the County. 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. 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 property subject to this appeal is located at SUBJECT ADDRESS, CITY-1, Utah. It is #####-acres of land, improved with a retail strip in the SHOPPING CENTER. The building has #####-square feet of rentable area with #####-retail units. The building is a Class D Construction and Class B rental. Construction began in 2013 and was 100% complete as of the lien date; however, the building was 41% vacant as of the lien date, because it had not yet been fully leased.

The Property Owner requests a reduction to \$\$\$\$\$ based on the cost of the land and the cost to construct the building on the subject property. As the building had just been completed on the lien date, it was the Property Owner's argument that the cost approach was the best indicator of value for that year, noting that the building was 41% vacant as of the lien date. The Property Owner had purchased the land 4-5 years ago for \$\$\$\$\$. The Property Owner provided a spread sheet which was represented to be a break out of all the costs to construct the subject building. This did appear to be a fairly comprehensive list that included, in addition to the \$\$\$\$\$ for land, site work, interior finish costs, exterior finish and shell costs. There was also a category for 'other costs' that included plans/engineering for \$\$\$\$\$ and \$\$\$\$\$ for inspection/testing. Building permit and other impact fees were not specifically listed. There was also no entrepreneurial profit added in this estimate. The total cost as of the lien date at issue in this appeal was \$\$\$\$\$.

Regarding the land value, the Property Owner provided land comparables to support that the value of the land as of the lien date would not be higher than the \$\$\$\$\$ purchase price, and argued that, in fact, the value of the land as of the lien date was actually lower than when the Property Owner had purchased it 4-5 years ago. The land comparables were all retail properties and they had sold for prices ranging from \$\$\$\$\$ per square foot to \$\$\$\$\$ per square foot. The subject property is #####-square feet, so a value of \$\$\$\$\$ would be \$\$\$\$\$ per square foot. The Property Owner also points to the fact that in its assessment as of the lien date January 1, 2014, the County indicated a land value of \$\$\$\$\$, which was lower than the \$\$\$\$\$ land value the Property Owner was using in its cost approach.

The Property Owner made the argument that a cost approach was one of the approaches noted by the County Board of Equalization in the form provided by the County for filing an

appeal to the County Board of Equalization. On that form for Section #3, Basis for Appeal and Required Documentation, for commercial properties one of the options is a Box D, which says, “Factual error or cost approach to value. SEE BACK FOR EXPLANATION.” On the back where the explanation is provided it says, “Submission of a Cost Approach is the least persuasive evidence of “Fair Market Value” except in recently constructed property with an appropriate evidence of the value of the land using one of the land value using one of the above basis.” The form goes on to state regarding an income approach, “This is generally the preferred method of valuation for income producing commercial or industrial property . . .”

The County’s representative argued that the cost information provided by the Property Owner was not a proper appraisal cost approach because it did not account for entrepreneurial profit or the opportunity cost of money. It was his contention that for this type of commercial retail property, built for multi-tenants, the income approach was the most reliable approach to value and was the approach the County generally used for this type of building. The County’s representative pointed out that three of the units had actually been leased prior to the lien date and all units were leased as of March 2014, shortly after the lien date. The County provided lease information on the following leases for units in the subject:

BUSINESS-1	#####	DATE	\$\$\$\$	%
BUSINESS-2	#####	DATE	\$\$\$\$	
BUSINESS-3	#####	DATE	\$\$\$\$	%
BUSINESS-4	#####	DATE	\$\$\$\$	
BUSINESS-5	#####	DATE	\$\$\$\$	
BUSINESS-6	#####	DATE	\$\$\$\$	%

The County also provided numerous retail leases from areas near the subject in location. There were 14 leases from BUSINESS-7 retail project ranging from \$\$\$\$ to \$\$\$\$ per square foot. There were 6 leases from BUSINESS-8 ranging from \$\$\$\$ to \$\$\$\$ per square foot.

The representative for the County, who is a Certified General Appraiser, calculated an income approach for the subject based on a lease rate of \$\$\$\$ per square foot which was well supported by the leases in the subject building and other neighboring leases provided by the County. The County’s representative did acknowledge that the County had originally used an incorrect square footage for the building at ##### and conceded to the square footage argued by the Property Owner of #####, which was indicated by the rent rolls. At the hearing, the County’s representative corrected his income approach from the ##### per square foot to the ##### per square foot. Using \$\$\$\$ per square foot and ##### of rentable square feet, his PGI was \$\$\$\$\$. He applied a 10% vacancy factor, a 10% expenses and a 7.40% capitalization rate which

indicated a value for the subject at \$\$\$\$\$. He acknowledged that this was a stabilized value, but indicated there would be very little rent loss if that was calculated due to the fact that the building had been leased out by March of 2014. He pointed out that the County's value was at \$\$\$\$\$, so considerably lower than his income value.

Property tax is based on the fair market value of the property as of January 1 of the tax year at issue, under Utah Code §59-2-103. Utah Code §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. The cost to construct a building does not necessarily equate to fair market value, especially in an income producing retail property. Further, the costs provided by the Property Owner appear to be the actual costs of an owner built building and do not account for entrepreneurial profit or opportunity cost of money. It was not likely that the owner would build this building to sell for exactly the cost spent by the owner to buy the land and build the building. The owner would want a profit to account for the opportunity cost of money and the risks taken. The County has more than supported its value based on an income approach. The value should remain as set by the County Board.

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, 2014 lien date. 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

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner