

05-1533  
Locally Assessed Property  
Signed 09/26/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	05-1533
	)	Parcel No.	#####
v.	)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)		
OF GRAND COUNTY,	)	Tax Year:	2005
STATE OF UTAH,	)		
	)	Judge:	M. Johnson
Respondent.	)		

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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 pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, 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:**

Commissioner Marc B. Johnson  
Commissioner Palmer DePaulis<sup>1</sup>

**Appearances:**

For Petitioner: PETITIONER  
                  PETITIONER REPRESENTATIVE  
For Respondent: RESPONDENT REPRESENTATIVE 1, Grand County Assessor  
                  RESPONDENT REPRESENTATIVE 2, Grand County Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 16, 2006. The subject property is a small retail/office

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<sup>1</sup> Commissioner DePaulis left the Commission subsequent to this proceeding. He

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building located at ADDRESS in CITY, Utah. The property is adjacent to other retail operations located in a small strip shopping center. The property was originally assessed at \$\$\$\$\$, which was reduced to \$\$\$\$\$ by the Grand County Board of Equalization (BOE). The Petitioner is requesting a value of \$\$\$\$\$.

#### APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

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provided some input into this decision, but did not participate in

ANALYSIS AND DISCUSSION

Petitioner purchased the property in December of 2003 for \$\$\$\$\$. The purchase price was based on the value determined in an appraisal, which in turn was based on an actual rent of \$\$\$\$\$ per month and a capitalization rate of %%%%. At the time of purchase the building had been occupied by, and used as, a ( X ). According to testimony, Petitioner planned to expand the improvements and convert the property to an alternative use. Subsequent to the purchase, a complaint was filed against the legal owner of the property, ADDRESS, ( X ), alleging a violation of certain easements and rights of the property. According to Petitioner's testimony, and a copy of the complaint that was provided at the hearing, the easement was recorded in 1969. The purpose of the easement was to provide access to, and parking for, the other properties in the shopping center. This matter is now pending in U.S. District Court.

As a result of this suit, PETITIONER, the Petitioner and president of the ( X ), claims that he cannot develop the property as he originally intended, until the legal issues are resolved in court. Therefore, he states, the property's value is diminished. He estimates the new value based on a recent short-term lease of \$\$\$\$\$ per month, which was negotiated after the prior tenant vacated the premises. He applied a %%%% capitalization rate to derive his value estimate. PETITIONER estimated that it would cost about \$\$\$\$\$ to \$\$\$\$\$ to remove a vault from the building. He also testified that the property suffered from considerable deferred maintenance, which was part of the reason for his plan to rehabilitate the property.

The county assessor, RESPONDENT REPRESENTATIVE 1, appeared on behalf of the BOE. She testified that she had no rental information to establish an income approach. The original

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deliberating the Order.

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assessment was based on a cost approach, and the BOE applied additional depreciation to the building to derive the reduced value.

We find that the only evidence of fair market value is the stated \$\$\$\$ purchase price and appraised value. The assessor did not dispute these figures. The BOE adjusted value was not supported by evidence. Petitioner's estimate of value was based on a temporary rent for a short-term lease. There is no evidence of what the property would rent for under a longer term lease, other than the one that was in place at the time of the purchase. Although PETITIONER'S plans for rehabilitation may be restricted by the court action, both the easement and the deferred maintenance were known, or should have been known by the appraiser and the purchaser. More importantly PETITIONER failed to establish a value for the property in its "as is" condition, with the restrictive easements in place, under a long-term lease. Therefore we find that while the legal issues may affect the future development and value of the subject property, there is no evidence to support a value lower than the purchase price and appraised value set one year before the lien date.

#### DECISION AND ORDER

Based on the evidence presented, the Commission finds the fair market value to be \$\$\$\$ as of the lien date.

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 Petitioner's name, address, and appeal number:

Utah State Tax Commission

Appeal No. 05-1533

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 \_\_\_\_\_, 2006.

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Marc B. Johnson  
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

*MBJ/05-1533.int*