

06-0935  
Property Tax/Locally Assessed Commercial  
Signed 04/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal No.    06-0935
	)	Parcel Nos.    #####-1, #####-2
v.	)	#####-3, #####-4
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Commercial
SALT LAKE COUNTY,	)	Tax Year:    2005
UTAH,	)	
	)	Judge:        Phan
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 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 order, specifying the commercial information that the taxpayer wants protected.**

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REPRESENTATIVE

For Respondent:    RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on December 11, 2006. Petitioner is appealing the assessed value as established for the subject property by Salt Lake County Board of Equalization. The lien date at issue is January 1, 2005.

APPLICABLE LAW

All 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 provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(12).)

(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. . . . (4) 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. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, 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).

DISCUSSION

The subject property consists of four parcels, parcel nos. #####-1, #####-2, #####-3 and #####-4. The properties are located at ADDRESS, CITY, Utah. The Salt Lake County Assessor’s Office had originally set the combined value of all four parcels of the subject

property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization sustained the value.

The subject property consists of a combined 3.71 acres of land improved mainly with an asphalt parking lot. COMPANY A is operating the parking lot on this property. There are two buildings on the parcels that are old, unused and in disrepair. They contribute no value to the property. The subject property is adjacent to the COMPANY B building, which is located on a separate parcel of land. The COMPANY B building parcel has spaces for only 12 parking stalls; the building needs to have 193 stalls available for parking. Petitioner owns both the COMPANY B building parcel and the subject property. Although open to public parking, the subject property also provides the parking needed for the COMPANY B building.

Petitioner points out that without having the subject property to use for parking, the COMPANY B building would not be in compliance with zoning requirements. There is no encumbrance on the deed or title of the subject property that requires it be maintained solely as parking for the COMPANY B building. Legally it could be sold off separately at the detriment to the COMPANY B building parcel, which would then be left with inadequate parking. However, it is clear that at least a portion of the subject property is essential to the functioning of the parcel with the COMPANY B building. Petitioner did not appeal the COMPANY B building parcel to the Tax Commission.

Petitioner asked that the combined values for the subject property be reduced to \$\$\$\$\$. This was the amount Petitioner allocated to the subject property when it acquired both the subject property and the adjacent COMPANY B building for a price of approximately \$\$\$\$\$ in July 2005.

Petitioner had made the allocation of \$\$\$\$\$ based on an appraisal of the subject property. Petitioner's appraiser had considered six land sales in the general location of the subject properties. Three of the sales were much smaller than the subject. One had sold in 1999,

two in 2001, two in 2002 and the last in 2005. However, the Commission recognizes in an area as developed as central CITY, land sales would not be prevalent. Appraisal adjustments were made for location and size. In addition, the appraiser made an adjustment for “utility.” It was the appraiser’s conclusion that the value for the subject should be 50% less based on the assumption that the subject’s use was limited to providing parking for the adjacent COMPANY B building.

Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE’S conclusion that the value of the subject property as of the lien date was \$\$\$\$\$. In appraising the property he did not value the property as if it needed to remain parking for the COMPANY B building. He considered the current use as parking was an interim use and not the highest and best use for this property. It was his conclusion that the highest and best use for the subject property was commercial development. His valuation reflected that basis. He did subtract demolition costs to remove the old structures that would be needed if the property were to be developed.

In the appraisal RESPONDENT REPRESENTATIVE considered four comparables. One of the comparables was the sale of the subject property that occurred in 2002, prior to when Petitioner acquired the property. The subject parcels, separate from the COMPANY B building, had sold for \$\$\$\$\$. His other comparables were reasonably similar in location. Like Petitioner’s appraisal, there were some size differences and the sale dates predated the lien date significantly.

Petitioner argued that the 2002 purchase of the subject property was not an arms length transaction and should not be considered as a comparable. Prior to the 2002 purchase, COMPANY C, COMPANY B’s land division (hereinafter for convenience referred to as COMPANY B), owned the subject parcels and they were used as parking. However, an unrelated entity, COMPANY D, owned the COMPANY B building parcel. COMPANY D had a right of

first refusal to purchase the subject parcels. COMPANY B leased the COMPANY B building from COMPANY D and used its own property, the subject property, for parking. Subsequently, another non-related entity, COMPANY C, made an offer to purchase the subject property for \$\$\$\$\$ to be used for commercial development. COMPANY B did not need to use the subject property for parking because COMPANY B owned another parcel of land across the street that was also being operated as a parking lot and would provide sufficient parking for COMPANY B's needs. COMPANY D purchased the subject parking parcels arguably under duress for the \$\$\$\$\$. If it did not do so, it would have been left owning the office building, but having insufficient parking for the building in the event COMPANY B vacated.

In reviewing the parties' evidence and arguments, the Commission notes that Petitioner did not appeal the assessed value of the parcel that has the building. It may have been more appropriate to value the subject and the parcel with the building together as one unit, rather than to try to separate the value for the land parcel. However, Petitioner did not file the appeal in that manner, arguing that there is a loss in utility to the subject property due to the assumption that it must remain a parking lot. Respondent did not provide information that the COMPANY B building parcel and the subject property values combined would result in a below market value. When asked about a legal encumbrance, Petitioner's representative indicated if the subject property sold, it would be the property with the building that would be out of compliance with zoning restrictions. There are currently more parking spaces on the subject property than are used by COMPANY B or in connection with the office building. Additionally, a multi-level parking structure could allow both sufficient parking and commercial development.

Respondent has valued this property as if available for commercial development and concluded a value of \$\$\$\$\$. Petitioner has valued this property as if the entire parcel must remain parking. Neither side has provided information on a unit value, despite that there was a sale of both the COMPANY B building and the subject property for \$\$\$\$\$. The Commission

believes that the subject parcel would not sell in its entirety as a stand-alone property without impacting the adjacent improved property. In the absence of evidence of how the increase in value requested by Respondent would impact the unit, including the COMPANY B building, the Commission concludes it does not have sufficient evidence before it to raise the value as requested by Respondent. The Commission additionally concludes that Petitioner has undervalued the subject parcel with its assumption of restrictions and limits on the use.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the value of the subject property as set by the County Board of Equalization for the lien date January 1, 2005, which is a combined value of \$\$\$\$\$.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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  
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.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Appeal No. 06-0935

Marc B. Johnson  
Commissioner  
*JKP/06-09351.2.int*

D'Arcy Dixon Pignanelli  
Commissioner