

06-1345  
Property Tax/Locally Assessed  
Signed 08/28/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1345
v.	)		
	)	Parcel No.	#####
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF GRAND COUNTY,	)	Tax Year:	2006
STATE OF UTAH,	)		
	)	Judge:	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 regulation 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:**

Marc B. Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Grand County Assessor  
RESPONDENT REPRESENTATIVE 2, Grand County Assessor Clerk/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 April 24, 2007.

At issue is the fair market value of the subject property as of January 1, 2006. The subject property is located in CITY, Utah, and consists of 1.03 acres of land and improvements used both as a primary residence and a commercial bed and breakfast. The county's Tax Roll Master Record ("Master") identifies a primary residential building with a year built of 1958, square footage of 2,621, and a "2<sup>nd</sup> Res 1700." The bed

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and breakfast consists of a single unit available for rent on a nightly basis. For the 2006 tax year, the Grand County assessed the subject property and the Grand County Board of Equalization (“BOE”) adjusted the assessment, as follows:

	<b>Assessor’s Original Market Value</b>		<b>County BOE Adjusted Market Value</b>	
	Primary	Secondary	Primary	Secondary
Real Estate				
0.19 acres	\$\$\$\$\$		\$\$\$\$\$	
0.84 acres		\$\$\$\$\$		\$\$\$\$\$
Improvements				
Primary Residence	\$\$\$\$\$		\$\$\$\$\$	
Bed & Breakfast		\$\$\$\$\$		\$\$\$\$\$
<b>TOTAL</b>		<u>\$\$\$\$\$</u>		<u>\$\$\$\$\$</u>

The County BOE determined that there were ‘significant inconsistencies in the assessment of “Bed and Breakfast” properties,’ and changed the apportionment of the improvements value to a 50-50% split between primary residential and bed and breakfast, based on the assessor’s recommendation. The County BOE also changed the real estate value to reflect “current land guideline levels.”

The Petitioner argues that even with the adjustments made by the County BOE, the current adjustment is incorrect because: 1) the subject’s value is not equalized with the value assessed to other properties, and 2) the portion of the subject’s value currently receiving the primary residential exemption is inconsistent with the application of the exemption to other properties. At the BOE hearing, Petitioner based her argument primarily on other bed and breakfasts in the city. However, in this proceeding she focused on inequities with other properties in the immediate neighborhood. Petitioner compared her valuation with one other bed and breakfast and two small nightly rental apartment buildings, and compared her residential exemption with commercial property in general.

The County asks the Commission to sustain the value set by the BOE

APPLICABLE LAW

**Fair Market Value.** 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.”

For property tax purposes, “fair market value” is defined in UCA §59-2-102(12) 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.”

**Primary Residential Exemption.** UCA §59-2-103(2) provides that “. . . the fair market value of residential property located within the state shall be reduced by 45% . . . .” Subsection 59-2-103(3) provides that “[n]o more than one acre of land per residential unit may qualify for the residential exemption.” For purposes of this exemption, “residential property” is defined in UCA §59-2-102(30) to mean “any property used for residential purposes as a primary residence. . . .”

Utah Admin. Rule R884-24P-52(F) provides for the administration of the primary residential exemption, as follows in pertinent part:

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.
2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.  
. . . .
5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.  
. . . .

**Appeal of County BOE Decision.** UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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. . . .

. . . .

(3) In reviewing the county board's decision, the Commission may:

- (a) admit additional evidence;
- (b) issue orders that it considers to be just and proper; and
- (c) make any correction or change in the assessment or order of the county board of equalization.

. . . .

**Equalization.** UCA §59-2-1006 also provides that:

(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.

. . . .

UCA §59-2-212 provides that “[th]e commission shall adjust and equalize the valuation of the taxable property in all counties of the state for the purpose of taxation.

**Burden of Proof.** For the Commission to change a value established by a county board, the party requesting the change must: 1) demonstrate that the County's assessment contained error; and 2) provide the Commission with a sound evidentiary basis for changing the County's assessment to the amount that the party proposes. *See 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).

DISCUSSION

Petitioner provided no market data, but instead compared the subject property with other assessments in the neighborhood. Accordingly, this appeal is based entirely on equalization. Petitioner focuses her argument first on the valuation of the bed and breakfast portion of the subject property compared with other rental units, and second on the residential exemption granted to the subject property compared with other commercial properties in the neighborhood.

Residential Exemption

We deal first with two miscellaneous commercial properties as they relate to the residential exemption. The first property is a combination duplex, single family residence with a significant portion of the land used for parking for a fleet of trucks. This property is 1.08 acres, and was granted the residential exemption for 1 acre. The remaining .08 acre was classified as secondary commercial land in spite of the fact that most of the property is used for commercial truck parking, according to Petitioner's testimony. The second parcel, although it is improved with a residential structure, is used as a ( X ). It received a residential exemption for the improvement and the entire 0.91 acres of land. These facts were not disputed by the assessor.

In considering equalization, there is no basis in the constitution, in statute, or in case law that permits the assessment of a primary residential exemption on the basis of comparison where an exemption has been improperly assessed.

Petitioner also provided a comparable assessment for another bed and breakfast across the street from the subject property. According to the master record it was built in 1984 and is 1,512 sq. ft. in size. The record also states "SFR remod B&B." Petitioner asserts the bed and breakfast consists of six units compared with her single unit. The master record also shows \$\$\$\$ for the bed and breakfast portion and

\$\$\$\$\$ for the primary residence, as well as \$\$\$\$\$ for 0.18 acres of commercial land and \$\$\$\$\$ for 0.17 acres of primary residential land. Although this property was submitted primarily for comparative valuation purposes, as discussed below, it also reveals some discrepancies in the allocation for the primary residential exemption. To begin, the subject property, which has a greater proportion of use devoted to residential purposes, has less of both the land and improvements assessed as primary residential than does the comparable assessment. Petitioner's property has 18% of the acreage, 38% of the land value, and 50% improvement value classified as primary residential. The respective percentages for the other property are 50% acreage, 50% land value, and 67% improvement value. In addition, the BOE record contains comparable assessments for two other bed and breakfasts that were submitted for the original appeal to the county but were not addressed directly by the Petitioner at this hearing. However, the Commission takes administrative notice of the BOE record. We do so in particular because of the BOE hearing officer's finding that 'there are significant inconsistencies in the assessment of "Bed and Breakfast" properties.' In those assessments as well, more units were available for rent than the single unit in the subject property, but the percentage of primary residential exemption ranged 47% to 55% for the same categories – land size, land value, and improvement value.

The assessor offered no explanation for the discrepancies in the allocation of the residential exemption between the subject and the first bed and breakfast. She did state that the property used for fleet parking may have been an error, and that the ( X ) has been corrected. Since the Petitioner did not address the other two bed and breakfasts identified in the BOE record, the assessor did not respond.

In the case of comparative assessments, the assessor has provided no explanation for allocating a lower percentage to the subject property, and there is no evidence that the other bed and breakfasts received an improper allocation. The question then becomes whether the Commission can establish the correct allocation for the primary residential exemption. We believe if there is sufficient evidence to establish a

rational basis for determining a correct allocation between residential and non-residential uses it is appropriate to do so, even on the basis of comparison with similar property. As stated previously, however no property may be granted an improper exemption even if other properties have been granted one. In order to establish an appropriate proportionate exemption, then, comparison with other properties, including valuation, must be addressed first.

Comparative Assessments and Valuation

Petitioner's second equalization argument is based on the value of the property. Her first comparison is with the initial bed and breakfast considered previously. That property has less acreage and a smaller residence, but the residence is newer and there are six rental units. The primary residence is assessed at \$\$\$\$\$ and the six units are assessed at \$\$\$\$\$ or \$\$\$\$\$ per unit. In comparison, the subject property is assessed at \$\$\$\$\$ for the residence, and \$\$\$\$\$ for the single bed and breakfast unit.

In addition, Petitioner submitted two small nightly rental complexes in the neighborhood. One was assessed at \$\$\$\$\$ or \$\$\$\$\$ per unit for six units, and the other was assessed at \$\$\$\$\$ or \$\$\$\$\$ per unit for eight units.

We will also consider the bed and breakfasts submitted to the BOE. One has a 4,970 sq. ft. improvement that was built in 1997. The residence and the bed and breakfast are each assessed at \$\$\$\$\$. The Petitioner has written on the master record "has more rooms to rent," but the number of units was not specified. The lot is 1.14 acres assessed at \$\$\$\$\$, with .74 acres classified as residential at \$\$\$\$\$. Thus the residential exemption ratio is 50% for the improvements, 47% for the land value, and 65% based on the lot size. The other property record shows the year built as 1980 and 2,991 sq. ft. for the residence, assessed at \$\$\$\$\$; and \$\$\$\$\$ for the bed and breakfast space. The residential exemption is 55%. Again, the number of units is not specified, although the master record shows "have more rooms to rent. One room holds 8 people." The land is

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assessed at \$\$\$\$ for 0.99 acres, with 0.50 acres classified as residential at \$. The exemption ratio for the land, then, is 51% based on size, and 48% based on value.

The assessor's argument is that the assessment was based on a purchase price for the property. She also stated that a staff appraiser was not admitted into the property, and that the allocation for the land value was requested by the prior owners.

### Conclusion

The Commission finds that the value of the "bed and breakfast" part of the improvements is excessive in comparison with every bed and breakfast submitted into the records and may be higher than the nightly rental units. There is no evidence to justify this discrepancy. We also find that the allocation for primary residential use is lower for the subject property, particularly for the land. Petitioner has not shown, and did not challenge the value of the land. Although the value on a per acre basis appears to be at a lower end of the range of values, it does not appear to be out of line and was assessed according to county land guidelines. In short, the only three bed and breakfasts in the record have more rental units per property, but have a higher percentage allocated to the residential exemption. Petitioner has established by a preponderance of evidence that the residential use relative to non-residential use is greater than as indicated on the assessment records.

At the same time, Petitioner has not provided an alternative basis on which to allocate the residential exemption, or to determine the value of the bed and breakfast. Nonetheless, the discrepancies are so egregious that the Commission will make the best estimate, based on the record.

With respect to the allocation of the land, the allocations for the other bed and breakfasts are in the general area of 50-50. Therefore the total value of the subject property land will be 50% residential at \$, and 50% commercial, also at \$. The value of the primary residence will remain at \$.



On a per unit basis for the bed and breakfasts, the comparable assessments range from \$\$\$\$\$ for the bed and breakfast across the street, to about a \$\$\$\$\$ per unit average for the two nightly rental properties. The other two bed and breakfasts do not show a per-unit breakdown, but the maximum would have to be \$\$\$\$\$-\$\$\$\$\$ for two units apiece, and would be \$\$\$\$\$-\$\$\$\$\$ for four units each. The first bed and breakfast, closest to the subject, shows 67% of the total value allocated to the residence, and 33% to the rental space. This allocation would result in \$\$\$\$\$ for the bed and breakfast, compared with \$\$\$\$\$ total for the six bed and breakfast units across the street. However, the Commission has no basis for comparison in terms of size, quality, or income. We are reluctant to reduce the assessment further without additional information to establish comparability.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the assessment is to be set as follows:

	<b>Primary</b>	<b>Secondary</b>
Real Estate	\$\$\$\$\$	\$\$\$\$\$
Improvements:		
Primary Residence	<u>\$\$\$\$\$</u>	
Bed & Breakfast		<u>\$\$\$\$\$</u>
 TOTAL		 <u>\$\$\$\$\$</u>

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 to the address listed below and must include the Petitioner's name, address, and appeal number:

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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.

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

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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