

06-1465
Locally Assessed Property
Signed 05/29/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF GARFIELD
COUNTY, UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal No. 06-1465

Parcel Nos. #####-1 & #####-2

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

Judge: Phan

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:

D’Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Attorney
RESPONDENT REPRESENTATIVE 2, Garfield County Assessor
RESPONDENT REPRESENTATIVE 3, Deputy County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 26, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject properties for the lien date January 1,

2006.

2. The properties at issue are Parcel Nos. #####-1 located at ADDRESS 1, CITY 1, Utah (“MOTEL 1”) and #####-2, located at ADDRESS 2, CITY 1, Utah (“MOTEL 2”).

3. For the January 1, 2006 lien date the County Assessor had valued the MOTEL 2 at \$\$\$\$ and the County Board of Equalization had sustained the value. The County Assessor had valued the MOTEL 1 at \$\$\$\$ and the County Board of Equalization made a small reduction to \$\$\$\$\$. At the hearing the County submitted appraisals for both of the properties. The appraisals indicated that the value of the MOTEL 2 was \$\$\$\$ and of the MOTEL 1 was \$\$\$\$\$.

4. The MOTEL 1 property consists of 1.90 acres of land, which has 293 square feet of frontage on STREET or (X) in CITY 1. About 75% of the land, or 1.423 acres are usable and almost entirely improved with the motel, parking spaces, and out buildings. On the remaining 25% of the acreage is a steeply embanked dry creek-drainage area, which contributes little use toward the motel operations. The motel consists of several separate buildings of varying style, some of which were constructed in the 1950’s and some were as new as 2000. The total motel wings calculate to be around 10,233 square feet of gross living area with ##### total units and ##### operational units. The office has 921 square feet. There is an on-site residence of 1,227 square feet. There are also some storage buildings, carport, covered spa and covered picnic pavilion on the property. Motel units #####-##### are of wood-frame and about 50 years old. Units #####-##### are brick construction. Units #####-##### are converted mobile homes about 25 years old. Units #####-##### were constructed in 2000 and are of wood frame.

5. The land size on the MOTEL 2 property is .49 acres and it is improved with a two-story inn that had been constructed in the early 1900’s. There are ##### guest units in total. ##### are located on the main level of the building along with the lobby and office, ##### units are on the second floor. The building

had been refurbished in 1995. On the main level there is also a built in parking garage. In addition to guest rooms on the second level of the building there is a three-bedroom apartment/residence.

6. At the hearing, Petitioner did not challenge that the appraisals indicated a fair market value for his properties. In fact he had offered the MOTEL 2 for sale and was asking for it in excess of \$\$\$\$\$, far more than its assessed value or even lower appraisal value. Instead, it was his request that the values be reduced below the appraisal values based on the 'reduction factor.' He alleged that the County applied a 'reduction factor' to other motel properties, depending on who owned the property. Petitioner stated that the following properties had sold or been listed for amounts much higher than their assessed values. He represented the following:

MOTEL 3:	Sold for \$\$\$\$\$	Assessed by the County at \$\$\$\$\$
MOTEL 4:	Sold for \$\$\$\$\$	Assessed by the County at \$\$\$\$\$
MOTEL 5:	Listed for \$\$\$\$\$	Assessed by the County at \$\$\$\$\$
MOTEL 6:	Listed for \$\$\$\$\$	Assessed by the County at \$\$\$\$\$

Petitioner argued that it was possible to determine an estimated sale price from the listed properties, as it was his representation that hotels in CITY 1 had sold for 85-100% of the listed price. He divided the sale price, or estimated sale price, by the assessed value to determine an amount for the reduction factor. It was his conclusion from the sales and listing that he should receive a reduction factor of 2.24. He requested that the fair market value determined for his two properties be reduced by the same factor.

7. Further it was PETITIONER'S position that the County had also substantially undervalued MOTEL 7. PETITIONER is not an appraiser. However, he indicated that the MOTEL 7 has 600 guest units, and other commercial activities on 335 acres and the County had valued it at only \$\$\$\$\$. He stated that it was general knowledge that a MOTEL 8 was worth \$\$\$\$\$ to \$\$\$\$\$ per guest unit and MOTEL 7 was valued less than that. He also indicated that the value should be higher than the typical MOTEL 8 values as MOTEL 7 was an international destination and had excess land. It was PETITIONER'S opinion that the market value of

MOTEL 7 was approximately \$\$\$\$\$. He offered this as support for his contention that the County was under assessing certain properties, while placing his at market value.

8. PETITIONER pointed to the sale of the MOTEL 9, which had sold for \$\$\$\$\$. PETITIONER said it had been assessed by the County at a value of \$\$\$\$\$, actually higher than the market value. The MOTEL 10 had sold for \$\$\$\$\$ and had been assessed by the County fairly close to that, at \$\$\$\$\$. A third motel sold was the MOTEL 11. According to PETITIONER, it had sold for \$\$\$\$\$ in 2006 and had been assessed by the County at \$\$\$\$\$.

9. PETITIONER also represented that CITY 1 has been declining economically. He had been in the motel business in CITY 1 since 1992 and it was his opinion that occupancy rates in the city were declining. He indicated that MOTEL 7 had been taking a larger share of the business, pointing out that in 1992 MOTEL 7 had ##### guest units, and now it has ##### guest units.

10. At the hearing the County presented an appraisal of the MOTEL 1 prepared by APPRAISER , MSA, General Certified Appraiser. APPRAISER was an independent appraiser who was not an employee of the County. It was APPRAISER'S appraisal conclusion that the value of the MOTEL 1, as of January 1, 2007 was \$\$\$\$\$. In his appraisal he considered both a sales comparison approach and an income approach. For the sales approach he considered four motel sales. Two were located in CITY 1 and two in CITY 2. The first comparable, located in CITY 1, was the MOTEL 9, which had ##### units and had sold in July 2006 for \$\$\$\$\$, or \$\$\$\$\$ per unit. The second comparable was the MOTEL 10, also located in CITY 1. It had sold in June 2004 for \$\$\$\$\$. This motel had ##### units and the sale price per unit was \$\$\$\$\$. The third comparable was the MOTEL 10 located in CITY 2, Utah and had sold for \$\$\$\$\$ in March 2006. This motel had ##### units and had sold for a price per unit of \$\$\$\$\$. The fourth comparable was the MOTEL 11, in CITY 2 Utah, which had ##### units and had sold for \$\$\$\$\$ or \$\$\$\$\$ per unit in August 2003.

APPRAISER made appraisal adjustments for the differences and concluded that they supported a value a sales comparison value for the MOTEL 1 of \$\$\$\$\$ per unit, or \$\$\$\$\$.

11. FINDING OF FACT 11 REMOVED PER PETITIONER'S REQUEST

12. FINDING OF FACT 12 REMOVED PER PETITIONER'S REQUEST

13. For the MOTEL 2, APPRAISER relied on the same four comparables as he had for the MOTEL 1. It was his conclusion from these sales that the indicated value for the property was \$\$\$\$\$. He also considered the income approach with projected gross income of \$\$\$\$\$ and a 2.8 GRM, which resulted in an income value of \$\$\$\$\$. In his reconciliation of these value indicators and market date he concluded that the value of the MOTEL 2 was \$\$\$\$\$, which is less than \$\$\$\$\$ per guest unit.

14. RESPONDENT REPRESENTATIVE 2, the Garfield County Assessor, testified that on a per unit basis the MOTEL 2 had always been valued low in the County and the appraisal value of less than \$\$\$\$\$ per unit is far lower on a per unit basis than any other motel in the County. He also testified that the County assessed the properties at fair market value based on sales information, when it could be obtained.

15. From review of the evidence presented in this matter, the Counties have submitted appraisals for both of these properties that provide a reasonable estimate of market value, for January 1, 2007. Petitioner has provided no evidence of market value. Petitioner's assertion of an equalization issue is not sufficiently supported. Petitioner has shown that some motels are assessed at less than market value and some near or higher than market value. The County has valued the MOTEL 2 lower than other motel properties in the County. The MOTEL 1's assessed value appears to be similar to other hotels in the city. Furthermore, PETITIONER'S use of the asking price in comparison to the assessed price is not reliable, as a party can ask any amount, not necessarily an amount related to its fair market value. PETITIONER has himself asked a price of \$\$\$\$\$ or higher for the MOTEL 2, and yet argued that it should be assessed at less than \$\$\$\$\$. The

Commission notes that three of the motels that actually sold in CITY 1 were assessed near or higher than their sale prices. Certainly the County should be striving to assess all properties at market value every year, and this would help eliminate the concerns regarding unfairness, when some values are at market and some are not.

16. The income information regarding MOTEL 1 from APPRAISER'S appraisal indicated income was increasing about 9% per year. Regarding the MOTEL 1 appraisal, the 9% increase is built into the income conclusion. There were also time adjustments made to the sales to the effective date of January 1, 2007. These facts support not raising the value to the appraisal value for the January 1, 2006 lien date, but leaving the value as set by the County Board of Equalization for the MOTEL 1 for that year. The appraisal tends to show an increase in value from the lien date at issue to the 2007 lien date.

17. For the MOTEL 2, the new appraisal value was consistent with a 2004 appraisal that indicated the value of the real property was \$\$\$\$\$ during that year. The 2004 appraisal had been prepared by the same appraiser, APPRAISER. In the appraisal for 2007, APPRAISER'S concluded value was far lower per unit than any of the sales comparables. Based on the fact that the 2007 appraisal indicates such a small amount in appreciation over the three-year period from 2004, and clearly supports that this property was significantly over assessed, the Commission concludes that the \$\$\$\$\$ appraisal conclusion for January 1, 2007 is also appropriate for January 1, 2006.

APPLICABLE LAW

1. 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 provided by law. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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 a 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. (Utah Code Ann. 59-2-102(12).)

3. (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).)

CONCLUSIONS OF LAW

1. 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).

2. In this matter Petitioner did not argue market value, and instead argued more on the basis of

equalization. In addition, in his prehearing submissions, PETITIONER argued that the County had engaged in unfair or discriminatory practices. Of these concerns, the Tax Commission has jurisdiction to consider only the question of market value and equalization pursuant to Utah Code Sec. 59-2-1006. Petitioner did not provide basis for a different market value. Regarding equalization, Petitioner has provided some information, two properties sold for significantly more than their assessed values, but it is insufficient to show that the value should be lowered based on the provision of equalization set at Utah Code Sec. 59-2-1006(4).¹ There were other motels that were assessed in value comparable to their sales prices.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2006, is \$\$\$\$\$ for parcel no. #####-1 and \$\$\$\$\$ for parcel no. #####-2. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2008.

Jane Phan
Administrative Law Judge

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

¹ The Utah Supreme Court has established criteria for proving a case under equalization in *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86; 100 P.3d 1206, 1208 (Utah 2004).

Appeal No. 06-1465

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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