

06-1657
Locally Assessed Property
Signed 06/23/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	Appeal No. 06-1657
vs.	Parcel Nos. #####-1, #####-2
BOARD OF EQUALIZATION OF TOOELE COUNTY, UTAH,	#####-3, #####-4
Respondent.	#####-5, #####-6
	#####-7, #####-8
	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:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy Tooele County Attorney
RESPONDENT REPRESENTATIVE 2, Appraiser
RESPONDENT REPRESENTATIVE 3, Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 24, 2008. Petitioner is appealing, pursuant to Utah Code Sec. 59-2-1006, the assessed values as determined by the County Board of Equalization regarding eight separate parcels of property. 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 parcels at issue in this matter are all located within the city of CITY, Utah. The parcel numbers, addresses and County values for each parcel are as follows:

Parcel No.	Address	County's Original Value	Board of Equalization Value
#####-1	ADDRESS 1	\$\$\$\$	\$\$\$\$
#####-2	ADDRESS 2	\$\$\$\$	\$\$\$\$
#####-3	ADDRESS 3	\$\$\$\$	\$\$\$\$
#####-4	ADDRESS 4	\$\$\$\$	\$\$\$\$
#####-5	ADDRESS 5	\$\$\$\$	\$\$\$\$
#####-6	ADDRESS 6	\$\$\$\$	\$\$\$\$
#####-7	ADDRESS 7	\$\$\$\$	\$\$\$\$
#####-8	ADDRESS 8	\$\$\$\$	\$\$\$\$

3. Parcel No. #####-1 (ADDRESS 1) is a commercial parcel of 1.05 acres in size and is located on the corner of STREET 1 and STREET 2, but extends back through the block to STREET 3. This parcel is improved with a multi tenant commercial building and two residential buildings. The commercial building is on the corner of both STREET 1 and STREET 2 ("BUILDING") and is divided into four retail or office spaces. The two residential properties are located on STREET 3, one of which is a duplex and one a single-family residence.

4. Petitioner explained that for BUILDING, he had redone the building. He indicated, however, that it had been slow to lease up. A (X) rented one of the spaces and COMPANY A another. However, one of the four spaces had been vacant and not fully built out. Petitioner indicated that he thought the quality of the spaces was as good as anything that could be found in the City and the rents he was asking were reasonable. It was his position that the commercial center of CITY had moved farther north, so the location of the building was an issue. The units in the building that were leased in 2006 had been a 1,000 square foot unit rented at a rate of \$\$\$\$ per year, a 993 square foot unit rented at a rate of \$\$\$\$ per year and a 1,737 square foot unit

rented at a rate of \$\$\$\$ per year. The fourth unit was 1,395 square feet and would rent for approximately \$\$\$\$ per year. Petitioner requested that the value for BUILDING be reduced to \$\$. He provided no appraisal and even a typical appraisal income approach would indicate that Petitioner's request is far below market value for BUILDING.

5. The County representatives prepared an income approach from the actual rents Petitioner charged for the spaces. The County representative concluded that based on the actual rents at full occupancy, minus a 15% vacancy factor, results in an income value for the BUILDING at \$\$, which is higher than the assessed value for this portion of the property. The County had assessed the value based on a cost approach. The County's representatives indicated that the cost less depreciation of the building was \$\$\$\$ and value of the portion of the land attributable to BUILDING was \$\$\$\$ for a total cost approach value of \$\$\$\$ for the BUILDING portion of the parcel.

6. The single-family residence on the parcel #####-1 was located at ADDRESS 9. Petitioner explained that this was a small, modest house with a very small yard. There were two bedrooms and a small living room. Petitioner indicated that there was no basement and he thought this property was worth \$\$\$\$.

7. The duplex was located on the corner of STREET 2 and STREET 3 and had a total of 1800 square feet. Petitioner indicated that he had renovated the east side unit over the last few years and was expecting to spend \$\$\$\$ to renovate the west unit in the duplex and replace the roof. He indicated that he leased out the east unit for \$\$\$\$ to \$\$\$\$ per month and when fixed up he would lease the west unit for \$\$\$\$ per month. However, he asked that the value for the duplex be reduced to \$\$\$\$ including a land value.

8. Because the residence and the duplex were on the same property as the commercial building, the County did not submit separate appraisals for these properties. The County attributed \$\$\$\$ of the total land value to the land associated with the residence and duplex. The County had valued the residential

improvement at ADDRESS 9 at \$\$\$\$\$ and the duplex improvement at \$\$\$\$\$. The land value was in addition to these amounts assigned to the improvements. The County pointed out that its lowest residential sales comparables had been at \$\$\$\$\$ per square foot. The house at ADDRESS 9 had 794 square feet.

9. It was complicated to determine the portion of the total parcel value attributed to the residence and the duplex because although the County had separate improvement values, the land value of \$\$\$\$\$ was combined for both properties. The duplex was located on the corner and it appeared from the photograph that more land was used with the duplex than the residence. The Commission's best estimate for the portion of the \$\$\$\$\$ in land value attributable to the single-family residence at ADDRESS 9 is based on the land value of the neighboring residential property. ADDRESS 7 is located next door to ADDRESS 9, and is on a separate parcel of property. The County assessment indicated that the land value for this neighboring property was \$\$\$\$\$. Using \$\$\$\$\$ for the land value of ADDRESS 9 plus the \$\$\$\$\$ improvement value, results in a value of \$\$\$\$\$. The Commission concludes that this value is too high for the land and improvement of ADDRESS 9. The County had submitted comparables for the property next door, ADDRESS 7, and concluded that they indicated a value of \$\$\$\$\$. The ADDRESS 7 property has a finished basement while, according to Petitioner and unrefuted by the County, ADDRESS 9 has no basement. The Commission does not find any reason that ADDRESS 9 should be valued higher than the value requested by the County for ADDRESS 7. Based on the comparables submitted for ADDRESS 7 and making an adjustment for a basement finish, results in an indicated total value for ADDRESS 9 of \$\$\$\$\$ including land. The Commission will attribute \$\$\$\$\$ of this value to the land. This indicates an improvement value of \$\$\$\$\$, or a reduction from the value of the entire parcel of \$\$\$\$\$.

10. Upon review of the information presented by the parties for the duplex, Petitioner did not submit sufficient evidence to establish a value lower than that set by the County. Using a simple income

approach based on the rents he expected to receive and even making an adjustment for the needed repairs, the value was certainly closer to the value set by the County Board of Equalization than the value requested by Petitioner of \$\$\$\$\$.

11. **ADDRESS 2.** For the property at ADDRESS 2, Petitioner pointed out that this was a residence, but it was located in a commercial area. His plan for this and other residences that he owned in the area was eventually to tear down the homes and put in commercial development. It was Petitioner's position that, due to the location, this property should not be compared to residences that were located in residential neighborhoods of CITY. He indicated it was a flat little house that was in poor shape. He is currently leasing this property as a single-family residence. He argued that it could be worth only \$\$\$\$\$. However, Petitioner did not present comparable sales, an appraisal or other market evidence to support his requested value.

12. The County had submitted comparables and made appraisal adjustments that indicated the ADDRESS 2 property was worth \$\$\$\$\$. However, the County did not ask to raise the value from the \$\$\$\$\$ set by the County Board of Equalization. From the information provided by the County, this residence is 101 years old. The lot size was .21 of an acre. The County acknowledged at the hearing that this residence had only 772 square feet. When taken into account in the adjustments made to the comparables, the comparable information does support the Board of Equalization value and not the \$\$\$\$\$ determination made by the County from the comparables.

13. **ADDRESS 3.** At the hearing the County argued that there was not a residence at ADDRESS 3 and that the address did match up with the parcel number. Petitioner submitted a post hearing letter and indicated that he had appealed parcel #####-3 and it was his property and located at ADDRESS 3. The Commission would note that this is consistent with the information Petitioner had submitted in its original appeal and in fact the County had submitted some value information regarding this property, possibly for either

the Initial Hearing, or the Board of Equalization hearing. It is clear that this parcel is appropriately before the Commission on appeal. It is a residential parcel and had been valued by the County as a primary residence at \$\$\$\$\$. However, Petitioner has not provided sufficient evidence that would indicate this parcel was overvalued.

14. **ADDRESS 4.** This is another residential property, which the County had valued at \$\$\$\$\$. Petitioner requested that the value be lowered to \$\$\$\$\$-\$\$\$\$\$. At the hearing the County representatives agreed that the Board of Equalization value was too high, that the value should be lowered to \$\$\$\$\$. This property consists of .12 of an acre and is improved with a 79-year-old bungalow in fair condition. Petitioner did acknowledge that this property was located in a more residential area. The County provided sales comparables that supported its requested value. Petitioner did not provide sales comparables to support his request.

15. **ADDRESS 5.** This is a residence located in a commercial area on STREET 1. The County Board of Equalization had set the value for this property at \$\$\$\$\$. Petitioner was asking that it be lowered to \$\$\$\$\$ or \$\$\$\$\$. At the hearing the County indicated the value should be lowered to \$\$\$\$\$. This property has a .38-acre lot and is improved with an 80-year-old bungalow. The property has only 768 square feet above grade and a basement of the same size, which is mostly unfinished. Again Petitioner argued that this property would eventually be used for commercial development and should not be valued by comparing it to residential property sales. However, Petitioner provided no other basis to support a lower value for this property. The County's hearing value was based on comparable sales. One sale was at ADDRESS 10 and had sold for \$\$\$\$\$ and was also in a commercial zoning. This comparable had a somewhat larger residence, but smaller lot size than ADDRESS 5. The comparable may have been in better condition but appraisal adjustments were made for the differences and the value of \$\$\$\$\$ was well supported.

16. **ADDRESS 6.** ADDRESS 6 is a residential property also in a commercial zone and there is commercial development around this property. This property is .24 acres in size and is improved with an 81-year-old bungalow with 781 above grade square feet. It is located next door to a COMOPANY B. The value set by the County Board of Equalization for this property was \$\$\$\$\$. Petitioner asked that it be lowered to \$\$\$\$\$ and the County asked that the value set by the County Board of Equalization be sustained. Like the other single-family residences at issue in this appeal, Petitioner is currently renting this property to tenants for their residence. However, because it is located in a commercial area, Petitioner argued it should not be valued based on the sales of other residences. Petitioner did not provide a basis for a lower value. Respondent's comparables, including the one on STREET 1, had sold in a range from \$\$\$\$\$ to \$\$\$\$\$. Without valuation evidence from Petitioner there is no basis to lower the value below the \$\$\$\$\$ set by the County Board of Equalization.

17. **ADDRESS 7.** The Property at ADDRESS 7 was a residential property that Petitioner leases out as a single-family residence. There is commercial development around this property. It had been valued by the County Boar of Equalization at \$\$\$\$\$. Petitioner was asking that the value be reduced to \$\$\$\$\$, while the County asked that the value be raised to \$\$\$\$\$. This property is .13 acres in size. It is improved with a 60-year-old bungalow with 772 square feet above grade. Petitioner points out that this lot is small with a short backyard and there is no garage or carport. There were two bedrooms upstairs and two in the basement, but no bathroom in the basement. Again Petitioner argued that the value should not be based on the sales price of residential properties but provided no other basis to support a lower value. The County presented comparables that had sold for prices ranging from \$\$\$\$\$ to \$\$\$\$\$ and supported raising the value to \$\$\$\$\$.

18. **ADDRESS 8.** The property at ADDRESS 8 was a residential property that Petitioner is leasing to a tenant. The County Board had set the value for this property at \$\$\$\$\$. Petitioner asked that the

value of this property be lowered to \$\$\$\$\$. This property is .11 acres in size and is improved with a 68-year old bungalow. The residence has 1,310 square feet above grade and basement of 638 square feet, of which about one-half is finished. Petitioner indicated that other than a sewer problem, this was one of the better rental houses. However, there has lately been an issue with the sewer backing up into the basement of the residence. Petitioner testified that this has happened twice in the last five or six months. Petitioner indicates that he had talked to the city and the city said it was his problem, and not a problem in the city lines. Petitioner indicates that he may have to replace the sewer line from the house to the city hookup. He does not have bids for this work at this time. The County indicated that if it were true that the sewer was backing up like this, it would reduce the value by \$\$\$\$\$. The County had submitted is comparable sales and made adjustments, which indicated that the market value of this property was \$\$\$\$\$. If the \$\$\$\$\$ adjustment were made to this market value, the resulting value would be \$\$\$\$\$. Although Petitioner did not provide a bid, or affidavit from the tenant that would support the his claim regarding the sewer backing up, Petitioner did provide his testimony on this point and the County provided no evidence that refuted Petitioner's contention. Therefore the Commission would make the \$\$\$\$\$ adjustment for the sewer issue.

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 provide 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. Petitioner has the burden of proof in this matter. 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. Petitioner has not provided a sound evidentiary basis to support a lower value for most of the properties at issue. Merely arguing that one does not agree with the manner used by the County to determine a value is not sufficient to meet this burden of poof. Petitioner did not provide comparables of other residences that were also in commercial neighborhoods or zoned commercially. He did not submit an appraisal for the

commercial property or prepare a reasonable income analysis. There is no basis to make further reductions in value, other than the changes noted.

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 follows for each parcel:

Parcel No.	Value
#####-1	\$\$\$\$\$
#####-2	\$\$\$\$\$
#####-3	\$\$\$\$\$
#####-4	\$\$\$\$\$
#####-5	\$\$\$\$\$
#####-6	\$\$\$\$\$
#####-7	\$\$\$\$\$
#####-8	\$\$\$\$\$

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.

Appeal No. 06-1657

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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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