

07-0055  
Property Tax/Locally Assessed Residential  
Signed 06/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal No.    07-0055
	)	Parcel No.    #####
v.	)	
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Residential
DAVIS COUNTY, UTAH,	)	Tax Year:    2006
	)	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 1  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Davis County Assessor  
                    RESPONDENT REPRESENTATIVE 2, Real Property Supervisor  
                    RESPONDENT REPRESENTATIVE 3, Appraiser

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 April 23, 2007. Petitioner is appealing the assessed value as established for the subject property by the Davis County Board of Equalization. The lien date at issue is January 1, 2006.

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. . . . (Utah Code Ann. Sec. 59-2-1006(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).

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS, CITY, Utah. The Davis County Assessor’s Office had originally set the value of the subject property, as of the lien date at \$\$\$\$\$. The Davis County Board of Equalization reduced the value to \$\$\$\$\$.

The subject property consists of .76-acres of land improved with an in-line multi-unit retail building. The building was constructed in 1963 and has 5,600 square feet. The building has six separate rental units and has been fully rented for the past couple of years. The building is located in a pocket commercial area, in what is otherwise a residential neighborhood. Petitioner considered the area of CITY where this property is located to be a “blighted” area and

Respondent's representative also indicated it was not a good location for commercial property, compared to other areas of Davis County.

Petitioner argued at the hearing that the value should be reduced to \$\$\$\$\$. He indicated that the original assessment had been \$\$\$\$\$. Based on his knowledge he felt that if the subject property were located elsewhere in Davis County it would be worth that much, but it was his opinion that in the blighted area in which the property was located it was worth half as much. Petitioner had purchased the subject property in 1998 for \$\$\$\$\$. The valuation had been increased to \$\$\$\$\$ for the next year. For 2006 there had been the substantial increase in value. Petitioner also submitted his actual rents and expenses for the property. Petitioner occupies the largest of the units, from which he operates a barbershop and tanning salon.

Respondent submitted an appraisal in this matter that had been prepared by RESPONDENT REPRESENTATIVE 3. RESPONDENT REPRESENTATIVE 3 considered a sales and income approach to value and it was his appraisal conclusion that the value of the subject property for the January 1, 2006 lien date was \$\$\$\$\$. Because he felt his sales comparables were in different locations from the subject he placed the most weight on the income approach.

In the income approach RESPONDENT REPRESENTATIVE 3 determined the potential gross income based on the actual rents that Petitioner received for the five units leased. The actual lease rates for these units were from \$\$\$\$\$ to \$\$\$\$\$ per month. These units ranged in size from 400 to 1,220 square feet. However, rent rates did not necessarily correspond directly to size. As Petitioner occupied the sixth unit, there was no established rent for that unit. RESPONDENT REPRESENTATIVE 3 imputed a rent for the sixth unit based on averaging the rents per square foot of the other tenants in the subject building, which resulted in a rate of \$\$\$\$\$ per month. Using the actual rents for five of the units and the rent of \$\$\$\$\$ for the owner occupied unit he concluded the potential gross income was \$\$\$\$\$. RESPONDENT

REPRESENTATIVE 3 pointed out that most areas of the County had stabilized vacancy rates around 7% or 8%. For the subject property, because of factors with its location, he used a 15% vacancy factor. He also allowed expenses and reserves totaling 23.44% of effective gross income. His capitation rate with tax rate added was 10.16%. Both the high vacancy rate and high capitalization rate would take into account the poor location. The value resulting from RESPONDENT REPRESENTATIVE 3's income approach was \$\$\$\$\$.

During the hearing Petitioner made the point that just because the unit that he occupied was bigger, would not mean that the rent would be high as RESPONDENT REPRESENTATIVE 3 had indicated in his appraisal. Petitioner acknowledged the rent for this owner occupied unit would be higher than for the other units, but only somewhere in the \$\$\$\$\$ or \$\$\$\$\$ range. The unit that he occupied was 1,800 square feet and he felt that it was larger than what he needed and would be larger than needed for any of the tenants that might want to occupy the space. Therefore, it was his conclusion the rent would not be on a pro rata basis per square foot. Petitioner does have many years of experience in leasing out the subject building.

Upon reviewing the information and evidence in this matter the Commission concludes that RESPONDENT REPRESENTATIVE 3's appraisal has adequately taken into account location factors with its high vacancy and capitalization rates. The one item in the appraisal that the Commission concludes is in error is the rent rate for the one unit occupied by Petitioner, which was based on an average of rent per square foot of the units. This rent is out of range of the other rents and Petitioner's estimate of \$\$\$\$\$ per month is a better market rent for the unit. When using this rent rate with RESPONDENT REPRESENTATIVE 3's other appraisal factors the value indicated from the income approach is \$\$\$\$\$. Because of the dissimilarities of location with the sales comparables the Commission would value this property based on the income approach.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2006, is \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

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.

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

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

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

Marc B. Johnson

D'Arcy Dixon Pignanelli

Appeal No. 07-0055

Commissioner

Commissioner

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