

07-0105  
Property Tax/Locally Assessed  
Signed 08/07/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF DAVIS  
COUNTY, UTAH,

Respondent.

**ORDER**

Appeal No. 07-0105

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2006

Judge: Phan

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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 1, Davis County Assessor  
RESPONDENT REPRESENTATIVE 2, Certified General 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 August 1, 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. . . . (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 is parcel no. ##### and is located at ADDRESS between STREET 1 and STREET 2 in 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 sustained the value.

The subject property consists of 5-acres of land improved with two-office/warehouse or “flex space” buildings for multi-tenant use. Building 1 was constructed in 1992 and has 38,040 square feet divided into six units. Building 2 was constructed in 1998 and has 41,264 square feet divided into four rental units. The buildings are of Class C construction with average construction grade. They are in good condition. Petitioners have improved the property with some landscaping and parking. The property has frontage on, and the buildings are visible from STREET 3, but access is from two side streets. However, the access is adequate and the property is in a good location for office/warehouse buildings.

Petitioner presented two primary arguments at the hearing. First he pointed out that the rents that they were charging for the property have increased at a much lower percentage than the County’s value had increased. The rent rates had increased only 11.96% from 2001 to 2006. Whereas, the increase in the property’s assessed value over one year’s time was more than 100%, from \$\$\$\$\$ to \$\$\$\$\$. He indicated he would be agreeable to a 25% increase over the 2005 value, but anything higher would be egregious. Petitioner’s second argument was that the value should be based on the income approach and the income approach should be based on Petitioner’s actual net income as indicated in Petitioner’s profit and loss statements.

Respondent submitted an appraisal prepared by RESPONDENT REPRESENTATIVE 2, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE 2’s appraisal conclusion that the value of the subject property was \$\$\$\$\$, However, Respondent submitted that appraisal as support of the County’s value set at \$\$\$\$\$ and not for the purposes of raising the value. RESPONDENT REPRESENTATIVE 2 explained that although he had looked for sales he was unable to find any truly comparable, so he had relied primarily on the income approach. For his income approach his gross operating income was

based on the actual rental rates that Petitioner was receiving for the units, from which he subtracted the actual appraisal expenses that were indicated by Petitioner in his profit and loss statements. He did consider market rents and expenses in the appraisal, but the value conclusion was based on actuals.

Upon review of the evidence and information it is clear that primary difference in value between RESPONDENT REPRESENTATIVE 2's appraisal and Petitioner's income approach was that RESPONDENT REPRESENTATIVE 2 correctly did not subtract from potential gross income the amount listed on Petitioner's Profit and Loss statement as "Depreciation Expenses." Although the term "net operating income" is used in appraisals it is not the same "net income" that is typically indicated in accounting or profit and loss statements. Depreciation may be allowed for income tax reasons, but it is not an appraisal expense. For that reason RESPONDENT REPRESENTATIVE 2 was correct in not deducting this depreciation and he is following standard appraisal technique. In addition RESPONDENT REPRESENTATIVE 2 had not subtracted property tax out as an expense, but he had taken this deduction into account in the capitalization rate, which is typical appraisal practice.

Adding back into the profit and loss statement the depreciation and taxes for 2005 the income from Petitioner's profit and loss statements that would be considered for appraisals would be \$\$\$\$\$ for 2005 and \$\$\$\$\$ for 2006. RESPONDENT REPRESENTATIVE 2's appraisal "Net operating Income" was in between at \$\$\$\$\$. RESPONDENT REPRESENTATIVE 2's appraisal value was reasonable for this property and supports the value set by the County Board of Equalization. Petitioner's evidence did not support an error in the County's value. For these reasons the Commission sustains the County's value.

Regarding Petitioner's point about the value doubling from one year to the next, the Commission realizes that this is a substantive tax increase and it would be difficult for any business. However, this does not prove the property was overvalued for 2006. In fact, based on

the 2006 appraisal value this increase tends to show the property was undervalued in 2005 and possibly for years prior to that. The law requires that taxes are based on the fair market value every year. See Utah Code Sec. 59-2-103. Ideally the County would reappraise each property and increase the value to market each year during a period of market appreciation. However, Counties are not always able to meet this ideal and this is recognized at Utah Code Sec. 59-2-303.1, which requires a reappraisal at least every five years. Had the County been increasing the values on the subject property every year to be reflective of the market value for each respective year, the increases in tax from year to year may have been more gradual.

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.

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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  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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