

07-0188  
Property Tax/Locally Assessed  
Signed 08/17/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DAVIS COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 07-0188</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2006</p> <p>Judge: Phan</p>
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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, COMPANY A  
For Respondent: RESPONDENT REPRESENTATIVE 1, Davis County Assessor  
RESPONDENT REPRESENTATIVE 2, Real Property Supervisor,  
Davis County  
RESPONDENT REPRESENTATIVE 3, Certified General Appraiser

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Davis 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 May 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. . . . (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 in the ( X ) 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 sustained the value.

The subject property consists of 2.63-acres of land improved with three multi-tenant office/warehouse buildings. The buildings are Class C construction built in 1995. They are of average grade and in good condition. Each building is 10,000 square feet. The first building is a two-tenant building. The other two buildings are divided into eight tenant units per building, with the units averaging 1,250 square feet.

Petitioner asked that the value of the subject property be reduced to \$\$\$\$\$. At the hearing Petitioner's representative explained that this value was based on an income approach using a lease rate of \$\$\$\$\$ per square foot, a vacancy and rent loss of 10%, expenses of 5%, a reserve of 1.5%, and a capitalization rate of %%%%. Petitioner provided no appraisal, no lease comparables and no other information that would support any of the components relied on in determining the value. Petitioner's representative said the lease rate at \$\$\$\$\$ was based on what the owner of the property had indicated should be the rate. Petitioner did not provide verification that the \$\$\$\$\$ rate was the rate actually being charged for the property. Petitioner's representative indicated that he had not looked at comparables rates for this type of property.

Respondent submitted an appraisal in this matter that indicated the value of the subject property was higher than that set by the County Board of Equalization and Respondent requested that the value be raised to the appraisal value. The appraisal had been prepared by RESPONDENT REPRESENTATIVE 3, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE 3'S appraisal conclusion that the value of this property was \$\$\$\$\$. RESPONDENT REPRESENTATIVE 3 considered both a cost and income approach in the appraisal, and they both reasonably supported his value conclusion.

RESPONDENT REPRESENTATIVE 3'S income approach was substantially higher than the calculation presented by Petitioner, as he concluded that the market lease rate for

the subject property was \$\$\$\$ per square foot. In making this determination he considered lease comparables all located within the ( X ) of comparable office/warehouse buildings. These lease rates were all over \$\$\$\$ per square foot including an actual lease for one of the subject units. There was no lease that supported a rate as low as what Petitioner was asking. Although there were some other differences in the appraisal and Petitioner's income approach, there was a lack of evidence from Petitioner to call these differences into question.

Petitioner has the burden of proof in this matter, not only to show error in the value set by the County Board of Equalization, but also to provide a sound evidentiary basis to support a lower value. Petitioner provided no evidence to support its requested lease rate or other factors. Respondent does have a burden as well to support a value higher than that set by the County Board of Equalization and Respondent has done so with its appraisal in this matter.

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. It is so ordered.

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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