

07-0189  
Property Tax/Locally Assessed  
Signed 08/16/2007

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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. 07-0189</p> <p>Parcel Nos. #####-1 &amp; #####-2 Tax Type: Property Tax/Locally Assessed 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, Appraiser, Davis County

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 consists of two adjacent parcels, parcels no. #####-1 (“Parcel #####-1”) and #####-2 (“Parcel #####-2”). Both parcels are improved with retail/commercial structures located within a small strip mall. The buildings are 11 years old and

of Class C, average construction. Parcel #####-1 consist of 3.11 acres of land and the building has 27,100 square feet, which is rented by COMPANY B and COMPANY C. Parcel #####-1 is located at ADDRESS 1, CITY, Utah. The County Board of Equalization had set the value for this parcel at \$\$\$\$\$.

Parcel #####-2 consists of 2.16 acres and is improved with a 25,200 square foot building being leased as a COMPANY D. It is located at ADDRESS 2, CITY, Utah. The Davis County Board of Equalization had set the value for this parcel at \$\$\$\$\$.

Petitioner asked that these properties be valued based on an income approach using the actual rental income. Petitioner's representative concluded that the value of Parcel #####-1 based on actual lease rates would be \$\$\$\$\$. He indicated that the potential gross income from the COMPANY B store was \$\$\$\$\$, or \$\$\$\$\$ per square foot, and for the COMPANY C \$\$\$\$\$ or \$\$\$\$\$ per square foot. His other factors in the income approach were a 9% vacancy rate, 5% expenses, 1.5% reserves and a %%% capitalization rate. Petitioner did not provide leases or balance sheets supporting the rent rates or net operating income for this property. Petitioner did acknowledge that the lease for the COMPANY B store was currently on a month-to-month basis.

Respondent submitted appraisals in this matter for both parcels. The appraisals had been prepared by RESPONDENT REPRESENTATIVE 3. It was RESPONDENT REPRESENTATIVE 3's appraisal conclusion that the value of Parcel #####-1 was \$\$\$\$\$. In the appraisal for Parcel #####-1 he considered a cost approach and an income approach. In considering the cost approach he determined that the value of the land alone was \$\$\$\$\$ and after adding the cost to construct the building minus depreciation it was his conclusion that the cost approach value for the property was \$\$\$\$\$. His conclusion from the income approach was \$\$\$\$\$ and he placed the most weight on that approach.

For his income approach on Parcel #####-1 RESPONDENT REPRESENTATIVE 3 considered five leases in the area as well as the asking lease for the COMPANY B space and another asking rate for a retail property. He indicates that COMPANY B was a month-to-month tenant. Petitioner was trying to find a longer-term tenant and was currently asking \$\$\$\$\$ for the space. Because this was an asking rate and not an actual lease RESPONDENT REPRESENTATIVE 3 adjusted it down 10% to \$\$\$\$\$. The other leases in the area were from \$\$\$\$\$ to \$\$\$\$\$ per square foot. From the leases he concluded that the COMPANY B space would rent for \$\$\$\$\$ per square foot and the COMPANY C, which was a smaller space, would rent for \$\$\$\$\$. For the COMPANY C this was approximately its actual rent rate. His other income factors were a 9% vacancy, 5% expenses, 3% reserves and insurance and a %%% capitalization rate.

The primary difference between RESPONDENT REPRESENTATIVE 3's income approach and Petitioner's was the lease rate for the COMPANY B space. Petitioner had argued that the potential gross income from that space was \$\$\$\$\$ and had subtracted a vacancy from that amount, but Petitioner had not provided balance sheets, lease agreements or invoices of any kind and it is unclear if the \$\$\$\$\$ was from the property being leased a full year, or if some vacancy was actually included. Petitioner just did not submit evidence to support its position on this property,

It was Petitioner's contention that Parcel #####-2 should also be based on its actual lease rate of \$\$\$\$\$ per square foot. However, Petitioner's representative had not realized that the value of this property had already been reduced by the County Board of Equalization to \$\$\$\$\$, which was lower than his calculation based on the \$\$\$\$\$ lease rate. Petitioner did not provide any documentation to support his position that this was the actual rate and Respondent indicated that the actual rate was somewhat higher than Petitioner represented.

For Parcel #####-2, RESPONDENT REPRESENTATIVE 3's appraisal indicated a value of \$\$\$\$\$. He did look at a cost approach for the property, which indicated a value of \$\$\$\$\$, but he placed the most weight on the income approach from which he concluded \$\$\$\$\$. The difference between his value and that requested by Petitioner was primarily due to the lease rate. Petitioner had indicated the actual rent rate was \$\$\$\$\$ and based his calculation on that amount. RESPONDENT REPRESENTATIVE 3 indicated the rent rate was actually \$\$\$\$\$, but considered the rate to be below market. He considered four other leases and two asking rates. It was his conclusion that like the COMPANY B space, the COMPANY D space would also lease for \$\$\$\$\$.

Petitioner should be aware that they have the burden of proof of showing error on the part of the County Board of Equalization and providing a sound evidentiary basis to establish a lower value. Petitioner should also be aware that once an appeal is filed, the Tax Commission is to place the value at fair market value, taking into consideration the presumption of correctness in the County Board's original value, regardless of whether this would be an increase or decrease in the value. Respondent has submitted appraisals, which support a higher value and Petitioner, has not provided documentary evidence that counters Respondent's appraisals, or even supports its own contentions regarding the value. The weight of the evidence supports raising the values to that requested by Respondent.

#### 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 #####-1 and \$\$\$\$\$ for Parcel #####-2. 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.

\_\_\_\_\_  
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