

07-1234
Locally Assessed Property
Signed 02/05/2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SAN JUAN
COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL DECISION**

Appeal No. 07-1234

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

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 B. Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
 PETITIONER REPRESENTATIVE, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE, Deputy Assessor for San Juan County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 14, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in San Juan County, Utah.
2. The subject property is parcel no. #####, located in CITY 1, Utah. It includes several commercial buildings, a primary residence, land underlying the commercial buildings and the residence, and certain oil and gas interests. The property is divided in half by

HIGHWAY, the (X) in the area. The PROPERTY 1 improvements are on one side of the highway, with the PROPERTY 2 improvements on the other side of the highway.

3. For the January 1, 2007 lien date, the County Assessor had valued the property at \$\$\$\$\$. The Board of Equalization reduced the total value to \$\$\$\$\$. The Commission issued its Initial Hearing Order on August 26, 2008, and reduced the total value to \$\$\$\$\$. At the formal hearing, the parties agreed to accept the values determined by the Commission for the PROPERTY 1 property and improvements. At issue are the valuations of the PROPERTY 2 Motel, (X), .10 acre residential lot, and one-half of the 2.9 acre frontage, which are bolded in the following table:

<u>Property Type</u>	<u>Description</u>	<u>Original Assessment</u>	<u>BOE Value</u>	<u>Initial Hearing</u>
Commercial building	PO/Laundromat	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Commercial building	Old Trading Post	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Commercial building	Storage/Laundry	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Commercial building	Metal Building	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
PROPERTY 1 Lobby	Guest Services	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
PROPERTY 1 Motel	Rooms	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
PROPERTY 2	Motel	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Partial living	Dbl Wide trailer	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
PROPERTY 2/	2.9 acres frontage	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
PROPERTY 1 Inn				
Residential lot	.10 acres	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Residence	Mobile home	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Residence	Mobile home	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Oil and Gas	(X), (X)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
	and (X)	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Total		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. The Taxpayer is asking the Commission to reduce the overall value of the PROPERTY 2 property by half.
5. Taxpayer offered testimony that CITY 1 is a remote area with approximately ##### full-time residents. They described it as a “haphazard, uncultivated, farmer’s barnyard, with no planning for building construction.” The Taxpayer submitted as Exhibit P-2 several photographs of the area.
6. The improvements on the PROPERTY 2 property consists of a single-story motel, an attached double-wide trailer for living area, and two single-wide trailers that are being used for storage. The single-wide trailers were not assessed as real property and are not at issue

in this appeal.

7. Taxpayer leases the PROPERTY 2 improvements to WITNESS for \$\$\$\$ per month. She runs and operates the motel, and lives in the attached living area.
8. The County Assessor spoke with WITNESS, who stated that there are very few rentals during the winter months. April through October, an average of five rooms per night are rented at a rate of \$\$\$\$ per night. At the time of the hearing, WITNESS was also renting two rooms on a monthly basis, but would not disclose the rental rate for those rooms.
9. A 1967 double-wide trailer is attached to the motel, but is not on a permanent foundation, and serves as part of WITNESS' living space. The living space is approximately 1,800 square feet. A photograph identified as ED8 in the County's Exhibit R-2 shows that the double-wide trailer has been integrated into the motel, and is connected as if it were a single structure.
10. The County allocated .10 acre of the land as primary residential, to account for WITNESS' living space at the motel.
11. Taxpayer objected to the County's use of properties in CITY 2 as comparable in its determination of value. Taxpayer argued that CITY 2 is four times larger than CITY 1, has more full-time residents, and more amenities. The County's representative stated that the values were reduced by 50% to account for the larger population and amenities in CITY 2.
12. In support of a reduction in value, the Taxpayer offered testimony on the PROPERTY 1 property. The PROPERTY 1 Motel is newer and larger than the subject. Approximately two years ago, Taxpayer gave the property to the (X) to operate, without charging rent. This was after the Taxpayer had received one offer to purchase the improvements for \$\$\$\$ and the possibility of more income in the future. The Taxpayer rejected the offer because the purchaser intended to market the property as a "(X)."
13. The County Assessor submitted copies of two building permits taken out by WITNESS in November of 1997 to add two-bedrooms at a cost of \$\$\$\$\$. These are identified as ED2 and ED3 in County's Exhibit R-2.
14. The County submitted as ED4 of its Exhibit R-2 a sketch of the PROPERTY 2 property showing the office, living area, laundry and storage, motel, and old trailers used for storage.
15. The County's representative pointed out that the economy on the January 1, 2007 lien date is different from the current economy. He stated that they had help from the state in

valuing the subject, and believes that the values accurately reflect market value as of the lien date.

16. The County's representative stated that while the double-wide trailer is not on a permanent foundation, it is a permanent part of the living space, and does have value. The living area is taxed as a primary residence, and was valued at approximately \$\$\$\$ per square foot.
17. In the County Assessor's December 31, 2008 letter (Exhibit R-1), he wrote that the improvements on the subject property had escaped assessment for many years, and were discovered as a part of the five-year reappraisal plan for the county. The letter also notes that the County intends to go back and recover the taxes for three of the past five years for the escaped property. The letter dated December 30, 2008 (Exhibit R-2) asks the Commission for clarification on the recapture of past taxes on this property.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(12), as follows:

"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. §59-12-102(12) (2007).

Utah Code Ann. §59-2-301 provides, “[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.”

The county assessor is required to update property values on an annual basis, and shall complete a detailed review every five years under Utah Code Ann. §59-2-306, set forth below in pertinent part:

- (1) Beginning January 1, 1994, each county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data. In addition, the county assessor shall complete a detailed review of property characteristics for each property at least once every five years.

Utah Code Ann. §59-2-306 (2007),

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

Utah Code Ann. §59-2-309 provides for a five-year look back period for the assessment of tax on escaped property, as set forth below in pertinent part:

- (1) Any escaped property may be assessed by the original assessing authority at any time as far back as five years prior to the time of discovery, in which case the assessor shall enter the assessments on

the tax rolls and follow the procedure established under Part 13 of this chapter.

Utah Code Ann. §59-2-309 (2007).

CONCLUSIONS OF LAW

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000). The Commission finds that the Taxpayer has provided testimony sufficient to call into question whether the Board of Equalization's value determination was in error. However, the Commission finds the Taxpayer failed to provide a sound evidentiary basis that would support reducing the value of the PROPERTY 2 property by one-half.

Property tax is based on the market value of the property, which is defined under Utah Code Ann. §59-2-102 as the amount for which property would exchange hands between a willing buyer and seller. Based on the amount of rent the owners receive from WITNESS, it is arguable that the PROPERTY 2 property has a value lower than that determined by the County. However, the County offered testimony that WITNESS rents on average 5 rooms a night at a rate of \$\$\$\$ for seven months out of the year. Based on the rental income earned by the motel, and in the absence of any documentation of the actual income and expenses of the PROPERTY 2 property, the values of \$\$\$\$ for the motel, \$\$\$\$ for the double wide trailer, \$\$\$\$ for the residential property, and \$\$\$\$ for one-half of the frontage do not appear to be inconsistent with the rental income.

The County has also requested clarification on recapturing the taxes for escaped property. The taxation of prior years is not before the Commission as a part of this appeal. The Commission will issue a separate response to the County regarding the taxation of escaped property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. ##### as of the January 1, 2007 lien date to be as follows:

<u>Property Type</u>	<u>Description</u>	<u>Value</u>
Commercial building	PO/Laundromat	\$\$\$\$
Commercial building	Old Trading Post	\$\$\$\$
Commercial building	Storage/Laundry	\$\$\$\$
Commercial building	Metal Building	\$\$\$\$
PROPERTY 1 Lobby	Guest Services	\$\$\$\$
PROPERTY 1 Motel	Rooms	\$\$\$\$
PROPERTY 2	Motel	\$\$\$\$
Partial living	Dbl Wide trailer	\$\$\$\$
PROPERTY 2/	2.9 acres frontage	\$\$\$\$
PROPERTY 1 Inn		
Residential lot	.10 acres	\$\$\$\$
Residence	Mobile home	\$\$\$\$
Residence	Mobile home	\$\$\$\$
Oil and Gas	(X), (X) and (X)	<u>\$\$\$\$</u>
Total		\$\$\$\$

It is so ordered.

DATED this _____ day of _____, 2009.

Jan Marshall
Administrative Law Judge

Appeal No. 07-1234

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 _____, 2009.

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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