

07-1475  
LOCALLY ASSESSED PROPERTY  
SIGNED 02-01-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF GRAND COUNTY, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 07-1475  Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2007  Judge: Chapman
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Property Owner  
For Respondent: RESPONDENT REP 1, Representative  
RESPONDENT REP 2, Grand County Chief Deputy Assessor  
RESPONDENT REP 3, Grand County Clerk

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 23, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The lien date is January 1, 2007.
3. At issue is the fair market value of the subject property as of the January 1, 2007 lien

date. The subject property consists of a 0.04-acre lot and a commercial retail building located at ADDRESS 1 inCITY, Utah.

4. PETITIONER (“Petitioner” or “property owner”) appealed the subject property’s valuation to the Grand County Board of Equalization (“County BOE”). The County BOE sustained the \$\$\$\$ value at which the subject property was originally assessed for the 2007 tax year. The property owner appealed the County BOE’s decision to the Tax Commission.

5. The 0.04-acre subject lot is narrow, approximately 11 feet wide and 168 feet long. The 0.04-acre lot is 1,742 square feet in size. The subject’s retail building, which is also approximately 11 feet wide and narrow, is 702 square feet in size. The subject’s building does not have a heating system.

6. The subject is currently leased at \$\$\$\$ per month, which is the rental rate that also existed on the lien date. A lease rate of \$\$\$\$ per month equates to \$\$\$\$ per square foot for the 702 square-foot subject.

7. The subject’s current value of \$\$\$\$ is comprised of a land value of \$\$\$\$ and an improvements value of \$\$\$\$. Given the land value of \$\$\$\$, the 1,742 square foot lot is currently assessed at a rate of \$\$\$\$ per square foot. Given the improvements value of \$\$\$\$, the 702 square foot building is currently assessed at a rate of approximately \$\$\$\$ per square foot. If an assessment rate for the 702 square foot building is determined from the total value of \$\$\$\$, the property is currently assessed at a rate of \$\$\$\$ per square foot.

8. The County asks the Commission to reduce the subject’s total value to \$\$\$\$. PETITIONER does not accept the County’s proposed value of \$\$\$\$, but states that a reduction to \$\$\$\$ would be acceptable.

9. RESPONDENT REP 1, an appraiser, prepared an appraisal for the County. In his appraisal, RESPONDENT REP 1 estimated the subject property’s value for the 2007 tax year to be \$\$\$\$, which equates to \$\$\$\$ per square foot for the 702 square foot subject building. He also determined that the current land value should be reduced from \$\$\$\$ to \$\$\$\$ per square foot, which would reduce the subject’s

land value to \$\$\$\$\$. After deducting the \$\$\$\$\$ land value from the \$\$\$\$\$ improvements value, RESPONDENT REP 1 derived an improvements value of \$\$\$\$\$, which equates to a rate of \$\$\$\$\$ for the 702 square-foot subject building.

10. PETITIONER testified that she would accept RESPONDENT REP 1's appraised value of \$\$\$\$\$, or \$\$\$\$\$ per square foot, for the subject's building. However, she did not accept RESPONDENT REP 1's appraised value of \$\$\$\$\$, or \$\$\$\$\$ per square foot, for the subject's land. She stated that the land value should be lower than \$\$\$\$\$ per square foot because of the rates at which other nearby lots were assessed and because the subject lot is so narrow.

11. In his appraisal, RESPONDENT REP 1 compared the subject property to six comparable sales and one current listing to estimate a value of \$\$\$\$\$ per square foot for the subject property (based on the square footage of the subject building). The six comparable sales are all located on STREET and sold between February 2002 and April 2009 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. Four of the comparables are sales of properties with buildings that are more than double the size of the subject's building. These four comparable sales show retail buildings selling for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The remaining two comparable sales, however, are for retail buildings that are much closer in size to the subject property. They sold for prices of \$\$\$\$\$ and \$\$\$\$\$ per square foot, respectively. These two properties each have 0.04-acre lots, like the subject, and have buildings that are 935 and 946 square feet in size. The comparable at ADDRESS 2, which sold for \$\$\$\$\$ (\$\$\$\$\$ per square foot), has a triangular building that is 946 square feet in size with 44 feet of frontage.

12. PETITIONER also submitted information about the comparable sale at ADDRESS 3. Although it sold for \$\$\$\$\$ in November 2006, less than two months prior to the lien date, the County assessed its value at approximately \$\$\$\$\$ (or approximately \$\$\$\$\$ per square foot) for the 2007 tax year. As a result, this property's 2007 assessed value appears to be approximately 30% lower than its fair market value.

13. PETITIONER also submitted another sale that was not included in the County’s appraisal. She stated that the property at ADDRESS 3 sold for \$\$\$\$\$ in August 2004. This property’s building is 2,351 square feet in size, which is more than three times the size of the subject’s building. When the \$\$\$\$\$ sales price is divided by the building square footage, a sales price of \$\$\$\$\$ per square foot is derived.

14. PETITIONER provided information about other retail properties located on STREET. She asserts that the subject property’s land value, whether it is the original assessed land value or the reduced land value proposed by the County, is inequitable when compared to the values per square foot at which these other properties were assessed for 2007. PETITIONER provided the following information for comparison to the subject:

<b>Parcel</b>	<b>Total Value</b>	<b>Land Size (Acres)</b>	<b>Building Size (Square Feet)</b>	<b>Land Value Per Square Foot</b>	<b>Building Value Per Square Foot</b>	<b>Total Value Per Square Foot</b>
Subject 35 N. Main	\$\$\$\$\$ (BOE Value)	0.04	702	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Subject 35 N. Main	\$\$\$\$\$ (County Appraisal)	0.04	702	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
61 N. Main	\$\$\$\$\$ (Assessed)	0.04	1,730	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
415 N. Main	\$\$\$\$\$ (Assessed)	0.04	946	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
33 N. Main	\$\$\$\$\$ (Assessed)	0.09	2,250	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
31 N. Main	\$\$\$\$\$ (Assessed)	0.10	2,117	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
57 N. Main	\$\$\$\$\$ (Assessed)	0.13	1,069	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

2. For property tax purposes, “fair market value” is defined in UCA §59-2-102(12) to mean:

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. . . .

3. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property . . . may appeal that decision to the commission. . . .

. . . .

(3) In reviewing the county board's decision, the Commission may:

- (a) admit additional evidence;
- (b) issue orders that it considers to be just and proper; and
- (c) make any correction or change in the assessment or order of the county board of equalization.

(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.

. . . .

4. Any party requesting a value different from the value established by the county board of equalization has the burden of proof. 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. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

### CONCLUSIONS OF LAW

1. The Commission finds the County's appraisal to be the best evidence of fair market value. Two properties similar in size to the subject property sold in late 2005 and late 2006 for prices of \$\$\$\$\$ and \$\$\$\$\$ per square foot. The property that sold for \$\$\$\$\$ per square foot in late 2006 contains a ( X ) building whose functional utility may be impacted to a similar degree as the narrow subject building. Furthermore, the property that sold for \$\$\$\$\$ per square foot is not located within the central "( X )" of CITY. Although the subject does not have a heating system, RESPONDENT REP 1 estimated that an adjustment of \$\$\$\$\$ or \$\$\$\$\$ per square foot would be required. Based on the sales information provided at the Formal Hearing, the Commission finds that a value of \$\$\$\$\$ per square foot, or \$\$\$\$\$, is a reasonable value for the subject property and the most persuasive value submitted by either party.

2. The Commission finds that the property owner has not shown that the County's proposed land value of \$\$\$\$\$ per square foot for the subject lot is inequitable when compared to the values at which other lots are assessed. Two other lots on STREET that are exactly the same size as the subject property are assessed at \$\$\$\$\$ and \$\$\$\$\$ per square foot, respectively. The County's proposed rate of \$\$\$\$\$ per square foot for the subject lot is in between these two rates. Because the \$\$\$\$\$ per square foot rate is for a lot outside of the "( X )," the Commission would expect the subject lot to have a value higher than this rate. The remaining three assessed land values are all below \$\$\$\$\$ per square foot. However, these lots are two to three times the size of the subject lot. Although the property owner argues that the narrowness of the subject

property's lot results in it not being worth any more per square foot than these larger lots, neither party submitted evidence to support this contention. In fact, the County's comparables sales clearly show that smaller properties generally sell for a higher amount per square foot than larger properties.

3. In addition, the Commission finds that the property owner has not shown that the County's total proposed valuation rate of \$\$\$\$\$ per square foot is inequitable. First, the Commission does not consider the properties with buildings that are between 1,730 and 2,250 square feet in size to be comparable to the subject. As mentioned above, the County's comparable sales clearly show that larger retail properties sell for a lower price per square foot than smaller properties. The smaller properties for which information is available are assessed at \$\$\$\$\$ per square foot (for a 1,069 square foot building at ADDRESS 4) and \$\$\$\$\$ per square foot (for a 946 square foot building at ADDRESS 5). The County's proposed value of \$\$\$\$\$ per square foot for the subject property is supported by the \$\$\$\$\$ per square foot rate at which the property at ADDRESS 6 is assessed. The property assessed at \$\$\$\$\$ per square foot for 2007 appears to be underassessed because it sold in November 2006 for \$\$\$\$\$ per square foot. However, the Commission notes that the Utah Supreme Court has ruled that evidence of one property assessed below its fair market value is insufficient to warrant equalization for a property assessed at its fair market value.<sup>1</sup> For these reasons, the Commission finds that a value of \$\$\$\$\$ per square foot, or \$\$\$\$\$, for the subject is reasonable and that the subject's value should be reduced to this amount.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject's current value of \$\$\$\$\$ should be reduced to \$\$\$\$\$ for the 2007 tax year. The subject's land value should be reduced from \$\$\$\$\$ to

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<sup>1</sup> In *Mountain Ranch Estates v. Utah State Tax Commission*, 2004 UT 86 (2004), the Utah Supreme Court found that a property owner whose property was assessed at fair market value could not establish a violation of its constitutional right to a uniform and equal assessment without providing evidence of more than one comparable property with a valuation disparity.

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\$\$\$\$. The subject's improvements value should be reduced from \$\$\$\$ to \$\$\$\$\$. The Grand County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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. §63G-4-302. 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 Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

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