
BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-1424 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2007</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:

Bruce Johnson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP.
For Respondent: RESPONDENT REP., Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 5, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the “Property Owner”) is appealing the assessed value of the subject properties for the lien date January 1, 2007.
2. For the lien date the County Assessor had valued the property at \$\$\$\$\$ and the County Board of Equalization (the “County”) sustained the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing the representative for the County requested that the Commission up hold the Board of

Equalization value.

3. The property at issue is Parcel No. ##### and is located at ADDRESS, in CITY, Utah, in the RETAIL CENTER A. The center is made up of (#) pad sites and one site for the parking structure. The subject parcel is both the pad site and the improvements thereon. The “improvements” are the THEATER A. The subject pad site is (#) square feet in size. The building is (#) square feet in size. The land is leased to the THEATER A through a ground lease. THEATER A constructed the theater.

4. The RETAIL CENTER A is an anchorless neighborhood shopping center, with other tenants being boutique shops, restaurants and an office building.

5. The subject parcel has an interest in the common areas of the project, which includes the parking areas. The parties were in disagreement as to the amount of that interest. Parking is provided by surface parking in front of the in-line retail stores and by a (#)-story parking structure. There are approximately (#) parking spaces. The parking structure is taxed as a separate parcel and for the 2007 tax year had been assessed at \$\$\$\$\$. Both parties testified that the assessed value for the subject parcel should be adjusted by some amount for the fact that the parking necessary for the operations on the subject property was being taxed separately to another parcel. However, the parties disagreed on the amount.

6. THEATER leases the pad site of the subject, the land only, for \$\$\$\$\$ per square foot for the (#) square foot site.

7. The Property Owner’s requested value of \$\$\$\$\$ was based on a direct capitalization income indicator and then the adjustment for the parking. It was the representative for the Property Owner’s contention that for the income indicator a reasonable lease rate for the property (both land and building) was \$\$\$\$\$ per square foot. He offered as comparables to support his rate three single tenant retail buildings, which leased from \$\$\$\$\$ to \$\$\$\$\$ per square foot, and one theater that leased for \$\$\$\$\$ per square foot. The theater comparable was for the THEATER B on ADDRESS 2. Both parties agreed that the THEATER B was in a better location for a theater. With the lease rate of \$\$\$\$\$, this indicated potential gross income of \$\$\$\$\$. It was the Property Owner’s position that the 10% vacancy rate should be applied to this PGI. He did supply part of a study from Commerce CRG on retail vacancy rates that supported rates from %%% to %%%. However, this information did not apply specifically to theaters. For the income indicator he also used 6% expenses and a capitalization rate of %%%. He did provide some capitalization comparables and a study to support the requested %%% rate and this information did reasonably support this capitalization rate.

Using these factors it was the Property Owner's conclusion that the income indicator for the property was \$\$\$\$\$.

8. However, the Property Owner asserted that because this income indicator was reflective of a property with adequate parking, an amount for the parking which had been assessed to the separate parcel containing the parking structure would then need to be deducted. It is clear that parking is required by zoning and also necessary for the theater operations.

9. It was the Property Owner's contention that an appropriate deduction for the parking was \$\$\$\$\$. When subtracted from the Property Owner's income indicator, this supported the Property Owner's requested value of \$\$\$\$\$. This adjustment was determined by applying 57% to the assessed value for the parking structure parcel. The Property Owner provided verification that the common area expenses were based on the buildable square foot divided by the total square foot. For the subject property, this was 57% and they paid this percent of the common area expenses. The representative for the Property Owner also pointed out that there are (X) parking spaces in the center. It was his position that zoning laws required that the movie theater have (X) spaces, but these were needed primarily for the evenings and weekends, while the office building needed parking spaces for the weekdays.

10. The Property Owner also looked at the second method for determining the value of the parking by finding a land value for the cost to provide parking to the theater. Zoning laws required (#) spaces. It was his contention that this would take a total of (#) square feet of land to provide this many parking spaces. Based on land sales, it was his contention that the price of the land would be \$\$\$\$\$ per square foot. From this method he concluded a parking adjustment of \$\$\$\$\$ could have been applied. However, in the conclusion, the Property Owner went with the lower of the two approaches and made an adjustment for parking of \$\$\$\$\$.

11. The County argued that the value set by the County Board of Equalization should be upheld. The County did not submit an appraisal either, but did submit a cost indicator and an income indicator. Both indicators concluded a value higher than that set by the County Board of Equalization. For the cost indicator, the County had considered five land sales to conclude that the land value would be \$\$\$\$\$ per square foot. The County then used a Marshal & Swift Cost Table to determine the value of the building. From this the County concluded a cost indicator of \$\$\$\$\$.

12. The County also considered an income indicator. The representative for the County determined the lease rate for the subject property was \$\$\$\$\$ per square foot. This was based on two theater

leases. The RETAIL CENTER B lease for \$\$\$\$ a square foot and the lease of the theater at RETAIL CENTER C for \$\$\$\$ per square foot. RESPONDENT REP. did acknowledge that these two properties were in better locations, both being in “power centers” with higher amounts of retail traffic. He made a 10% reduction for the better locations, but he also made a positive adjustment for market conditions because the leases had been entered into several years prior to the lien date. He also tried to estimate a lease rate for the subject property based on the land lease and cost new. This resulted in \$\$\$\$ per square foot but is very speculative.

13. Using the \$\$\$\$ per square foot, 5% vacancy, 6% for expenses and a %%% capitalization rate resulted in a value of \$\$\$\$ from the income indicator. Although he did include some capitalization rate comparables, they were sales from 2005 primarily, with only one sale in early 2006. For the vacancy he argued for a 5% stabilized rate. It was his contention that theaters were generally subject to long-term leases and did not have the vacancy factors as other retail property. Also, he noted that it was a (X) building and is fully occupied. He argued the retail statistics relied on by the Property Owner included multi-tenant buildings.

14. Like the Property Owner, the County representative stated that an adjustment would then have to be made for the parking. However, the County’s adjustment of \$\$\$\$ was considerably lower than the Property Owner’s. The County’s adjustment was based on 21% of the assessed value assigned to the parking structure parcel. The County provided the recorded Declaration of Condominium for this complex and argued that it provides that the subject property has a 21% ownership interest in all the general common elements.

15. The Board of Equalization value was based on rent rate of \$\$\$\$ per square foot, 5% vacancy, 6% expenses and a %%% capitalization rate. This calculated to be an income indicator of \$\$\$\$\$. From this the Board of Equalization had deducted \$\$\$\$ for the parking. This parking adjustment was a different percentage from that supported by the parties.

16. A primary issue in this matter is how the adjustment for parking should be determined. The County argued an adjustment based on 21% of the assessed value of the parking structure and the Property Owner an adjustment based on 57% of the value. It is unclear, exactly, how the County Board of Equalization came up with its adjustment of about 30%. Looking at the Condominium Declaration provided by the County, and as noted by the representative for the Property Owner, the 21% interest referred to by the County is the percentage of the subject land to the total land in the center including the parking unit. Therefore, removing only 21% of the value is still double taxing some portion of the parking unit. If the parking unit were removed

as appropriate to determine the percentage of the parking unit attributable to each of the other parcels, the total land of all the pad sites would be (#) square feet. The (#) square feet of the subject parcel would be 42% of the total, not 21%. Therefore, the County's 21% is not a correct amount for the adjustment.

17. The Property Owner has not provided a sound evidentiary basis to lower the value below that set by the County Board of Equalization. The Commission does not find the Property Owner's request for a parking adjustment of 57% to be persuasive. Considering the legal ownership interest as stated in the Condominium Declaration, which indicates that the subject parcel would have an interest in the common area parking of 42%, and the number of spaces required for the theater operations, the 42% adjustment for the parking is appropriate in this matter. The theater's use of parking is primarily evenings and weekends, while the office building also requires significant parking, but primarily on weekdays.

18. Additionally, comparables were offered that supported a lease rate higher than the \$\$\$\$ per square foot that the Property Owner had relied on to determine its requested values. There were two leases of theater properties provided, one at the RETAIL CENTER B and one at RETAIL CENTER C. Both sides indicated that these were superior locations. The County had made both location adjustments and market or time adjustments, but chose a lease value somewhere between these two comparables. From review, it appears that a lease rate of \$\$\$\$ is too low. Because both the parking adjustment and the lease rate are such significant factors in the valuation, correcting these two factors would support a value at least as high as that set by the County Board of Equalization.

APPLICABLE LAW

1. 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 provided by law. (Utah Code Ann. Sec. 59-2-103.)

2. "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. 59-2-102(12).)

3. (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 . . . (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). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

CONCLUSIONS OF LAW

1. Property tax is based on the market value of the property, which is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-2-102. In determining the market value for this property, the Commission notes that the burden of proof is on the Property Owner to show error in the value set by the County Board of Equalization and to support a lower value. Although the Commission does not disagree with the Property Owner’s contention that the adjustment made by the County Board for the fact that the parking is on another parcel was in error, the alternative adjustment proposed by the Property Owner was found to be too high. Additionally, the lease rate relied on by the Property Owner to derive its value was refuted by the evidence submitted. The Commission does not have a sound evidentiary basis to reduce the value below that set by the County Board of Equalization.

Jane Phan
Administrative Law Judge

Appeal No. 08-1424

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2007, is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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